

TRANSCRIPT OF PROCEEDINGS

INQUIRY INTO THE COVID-19 HOTEL QUARANTINE PROGRAM

BOARD: THE HONOURABLE JENNIFER COATE AO

DAY 10

10.00 AM, MONDAY, 31 AUGUST 2020

MELBOURNE, VICTORIA

**MR A. NEAL QC appears with MS R. ELLYARD, MR B. IHLE,
MR S. BRNOVIC and MS J. MOIR as Counsel Assisting the Board of Inquiry**

MR D. BATT QC appears with MS K. O'GORMAN for Crown Melbourne Ltd

**MS J. FIRKIN QC appears with MS S. KEATING and MR S. STAFFORD for
the Department of Environment, Land, Water and Planning**

**MS C. HARRIS QC appears with MS P. KNOWLES and MR M. McLAY for
the Department of Health and Human Services**

**MS J. CONDON QC appears with MS R. PRESTON and MR R. CHAILE for
the Department of Jobs, Precincts and Regions**

DR K. HANSCOMBE QC appears with MS H. TIPLADY for the Department of Justice and Community Safety

MR R. ATTIWILL QC appears with MS C. MINTZ for the Department of Premier and Cabinet

MR J. GRAHAM appears for Four Points by Sheraton Melbourne, Docklands

MS A. ROBERTSON appears with MS E. GOLSHTEIN for MSS Security Pty Ltd

MR A. WOODS appears for Rydges Hotels Ltd

MR S. DUGGAN appears for Travelodge Hotel Melbourne (Docklands) and Mr Ram Mandyam

MR A. MOSES SC appears with MS J. ALDERSON for Unified Security Group (Australia) Pty Ltd

MS J. DAVIDSON appears for Victoria Police

MR R. CRAIG SC appears with MR D. OLDFIELD for Wilson Security Pty Ltd

MS D. SIEMENSMA appears for Your Nursing Agency (Victoria) Pty Ltd

CHAIR: Good morning, Mr Neal.

MR NEAL QC: Good morning, Madam Chair.

5 CHAIR: We're ready to proceed with Mr Menon. I can see Mr Menon is on screen.

MR NEAL QC: That's correct.

10 CHAIR: Because Mr Menon is responding to me, I'm going to assume that he can both hear me and see me. Is that correct, Mr Menon?

MR MENON: I can, Madam Chair. Good morning.

15 CHAIR: Thank you. Good morning.

Mr Menon, I'm sure it has been explained to you that for the purposes of giving your evidence before the Board that you are required to make a solemn promise and I understand that you wish to do that by way of taking the affirmation.

20 MR MENON: That's correct, Madam Chair.

CHAIR: For that to happen, I'll pass you over to my associate, who will administer the affirmation to you. Thank you, Madam Associate.

25 **UNNI MENON, AFFIRMED**

30 CHAIR: Thank you, Mr Menon. I'll hand you over to Mr Neal now. Thanks, Mr Neal.

MR NEAL QC: Thank you, Madam Chair.

35 **EXAMINATION BY MR NEAL QC**

MR NEAL QC: Good morning, Mr Menon.

40 A. Mr Neal, good morning.

Q. Could you state your full name, please.

45 A. Unni Menon.

Q. And your occupation?

A. I'm the Executive Director, Aviation Strategy and Services, with the Department of Jobs, Precincts and Regions.

5 Q. Thank you. And Mr Menon, you have provided to this Inquiry a witness statement dated 24 August 2020. Do you have a copy of that to hand?

A. I do, Mr Neal.

10 Q. To the best of your knowledge, is your witness statement true and correct?

A. It is.

15 Q. In your document, your witness statement, you reference a number of documents, which I take it you suggest should be read with your statement in order to understand it best?

A. I do.

20 MR NEAL QC: Madam Chair, I tender the witness statement of Mr Menon and the bundle of documents which appears in folder B, I think one of which is now in a redacted form but should be up in that form in the hearing book, on my understanding.

25 CHAIR: Thanks, Mr Neal. I'll mark the statement of Mr Menon as Exhibit 49 and the bundle of documents in folder B as Exhibit 50.

EXHIBIT #049 --- STATEMENT OF UNNI MENON

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EXHIBIT #050 --- ANNEXURES TO STATEMENT OF UNNI MENON

35 MR NEAL QC: Your current role is the Director of Aviation Strategy and Services, you said?

A. That is correct.

40 Q. Do I understand that in late March this year you temporarily left that position to take up another position?

A. That's correct.

45 Q. And for a period of time were you then full-time engaged in the Hotel Quarantine Program?

A. I was.

Q. And was the relevant period from early April until 1 July?

A. Well, I had earlier engagement really, effectively from 22 March to 30 June.

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Q. Let me clarify the latter date, if I may. After 30 June did you have any ongoing responsibility for the program, the Hotel Quarantine Program?

A. No, I did not.

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Q. Is it the case that there was a procurement of hotels for the purposes of returned travellers which had occurred under the direct authorisation of the Departmental Secretary Mr Phemister before you were personally starting to procure hotels?

15 A. That's not to my recollection. So Mr Phemister contacted me on 27 March, advising of the fact that there was a National Cabinet decision in relation to mandatory quarantining and that I was to then swiftly secure an appropriate pipeline of accommodation to allow the mandatory quarantining to take effect as of 29 March.

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Q. Perhaps I was imprecise in my questioning. In terms of your contractual power to procure hotels, do I understand that from 9 April you had a delegation from Mr Phemister to allow you to do that in the formal sense and that previously he had done that?

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A. That's correct.

Q. Thank you. Prior to your engagement in the Hotel Quarantine Program did you have any relevant experience in terms of procuring hotel accommodation?

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A. To a limited extent, specifically around hotels. It was through my previous life, both in the public service and in the private sector, where I have had staff requiring travel and accommodation and I certainly did involve myself in contracting and assisting in that process. But it was to a limited extent in terms of hotel contracting accommodation experience.

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Q. For travelling staff and the like?

A. That's correct.

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Q. Is it a fair assumption that you had no particular experience in procuring hotels where people would be quarantined?

A. That would be correct. Except I have had a fair amount of experience and exposure in contracting third party services for a variety of functions, both in the private and in the public sector.

45

Q. Yes. I'm sorry, I didn't mean to suggest anything to the contrary. I was only suggesting to you in terms of procuring hotel accommodation, particularly appropriate for people being in compulsory quarantine, that was not your previous experience?

5

A. No, that's correct.

Q. You state, I think at paragraph 12 in particular of your statement, that you first became aware of the Hotel Quarantine Program via a telephone call from Mr Phemister --

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A. That's correct.

Q. --- on 27 March, about the middle of the day on 27 March?

15

A. That's correct.

Q. I should perhaps correct that. The likelihood that there was to be a need for procurement was brought to your attention on that date?

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A. Yes, it was.

Q. You do make plain in your statement, however, you were previously engaged in a process of assessing hotels for persons who were, if I can put it generally, affected by COVID-19 prior to that point in time?

25

A. That's correct.

Q. Could you explain to the Board how you were previously or prior to that point engaged for the purpose of procuring hotels and to what end was that?

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A. So, on 22 March, I recall it was a Sunday, I did receive a phone call from Mr Phemister, my Secretary to our Department, the Department of Jobs, Precincts and Regions, asking that I, with immediate effect, commence work with assisting and supporting the Department of Health and Human Services in securing and potentially identifying and securing accommodation stock that may be necessary in the event that we have community-related transmission of COVID-19 and, you know, vulnerable community segments may need self-quarantining as a preventative measure. So that was the request from Mr Phemister and I very promptly then established contact with the relevant executives in DHHS and we began that process.

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40

Q. Am I correct in understanding that that was the Hotel for Heroes program that you are referring to?

A. It evolved into the Hotel for Heroes. It didn't necessarily have a title at that point. It was really more a pan-Victoria view where there were a range of what was deemed to be potentially vulnerable community groups or community segments that may,

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through exposure to COVID-19-affected individuals or working in such environments where they had exposure and for whatever reason may have found it difficult to self-isolate at home, we would need to identify and secure a range of accommodation to allow them to do so.

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Q. And as to that cohort of people to which you have just referred, did you have a particular understanding about the restrictions that they would be under in any accommodation?

10 A. Well, that was information that we were, you know, in conversation with DHHS. My role was the securing of supply. So we really had to understand what the parameters were to secure that supply. And firstly what's available out there, you know, who's willing --- which of the accommodation properties were willing to actually offer their inventory for this purpose.

15

Q. I'm assuming the characteristics of any accommodation and how appropriate they were to the people who were to be accommodated?

20 A. That's correct. So when we, on Monday the 23rd, we set up appointments with the major peak bodies representing accommodation providers in Victoria, the Australian Hotel Association and Accommodation Association of Australia, together with the Victorian Tourism Industry Council, and the Department of Health and Human Services colleagues, together with myself, met with them and put forward what it is that we were trying to achieve, which was essentially, with their help and
25 collaboration, to reach out to their membership, which was the length and breadth of Victoria, looking for accommodation that could potentially be available in the first instance and, secondly, be used to house vulnerable community segments as we previously discussed.

30 Q. Apart from the simple question of availability, and I'm assuming rates, costs, what other particular features or characteristics were you looking for in order to determine whether a particular hotel accommodation was appropriate or not?

35 A. With the help of our DHHS colleagues, we began to better understand some of the requirements that DHHS felt were important when we were looking to identify this type of property. There were a variety of issues: room configurations, because you would have different demographics that potentially may require isolation, everyone from individuals to couples, occasionally to families, so we needed to find a suite of accommodation that had a range of optionalities in terms of room types and room
40 stock. These were early days. So that evolved and matured as time progressed in terms of, you know, the needs that we became aware DHHS required.

Q. And in giving me that answer, I'm still understanding your reference point is the pre-quarantine program that you were engaged in?

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A. Correct. That is correct, yes.

Q. You have stated that as of --- sorry, I'll go back a point. Is it correct to say for the purposes of the program, that became the Hotel for Heroes program latterly, that you had, as of about 27 March, collected a certain degree of information about available hotels and certain other criteria?

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A. That's correct.

Q. And indeed you refer in your statement to the fact that you had at that point, 27 March I think, already a spreadsheet available to you which dealt with criteria of availability as well as rates, cleaning and catering needs and security needs?

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A. The cleaning, catering and security needs were specifically, Mr Neal, referring to the task we subsequently undertook on 27 March to short-list a range of property that was suitable for mandatory quarantine. So that was not detail that we were initially looking to identify when we were looking for a more general all-of-community task.

15

Q. I see. Then you had, if I can understand you correctly then, a base of information from your --- what I'm calling the Hotel for Heroes program, and to that you were adding certain other criteria in order to assess hotels for quarantine purposes?

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A. That is correct, yes.

Q. As at the date of 27 March were you personally aware of the need or --- I beg your pardon --- the function of security in hotels?

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A. No, not really, no. I was asked at that point to find --- find out, of the hotels that we short-listed for the purpose of mandatory quarantine, what the capability and capacity were for each of those short-listed hotel stock in terms of provision of security, provision of cleaning and provision of catering.

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Q. With those criteria, the process moved forward in order to actually select and in some instances at least stand up hotels, that is activate hotels for the purpose. So you had a broad range of information available to you from which you then would select certain hotels and those hotels would be activated according to the inflow of passengers and the need. Is that the way the system worked?

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A. That's correct. And, you know, the short-listing process, for the first tranche of hotels that we're now referring to, post 27 March, involved us seeking feedback from the State Control Centre in terms of any preferences from a mandatory quarantining perspective. The feedback we received was that there was a preference for hotels involved in the mandatory quarantining process to be within the Melbourne CBD. And the reason that I understand it was that it was principally close or in close proximity to major hospitals, to major testing centres, and then, from a security and safety perspective, it is in a confined geographic area.

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Q. Yes. In your witness statement --- I'm referring in particular to paragraphs 31 and 32 of it --- you make the point that both in the selection and in the renewal of any

hotel contracts there was some consultation between departments, that is your Department and DHHS, but I think your statement is clear that as far as you were concerned the ultimate call was with DHHS in terms of selection ---

5 A. That's correct.

Q. --- selection or renewal.

A. That's correct.

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Q. What criteria or input was DHHS making available to you in order to get to that critical point where you could say "yes" or "no"?

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A. There were some very important criteria that DHHS would seek and would look for. And if I may reflect on what that is, it varied from room type, for instance, configuration of the rooms and layout of the rooms, because we needed to be able to successfully accommodate a range of demographics of inbound travellers, everyone from singles to couples to families. So that's one thing.

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Access to natural ventilation was something DHHS was looking for, wherever possible --- windows, balconies, access to balconies, you know, controlled areas for recreational purposes was looked at. The layout of the check-in and the logistics around check-in, you know, how big, how small; was there opportunity, for instance, for travellers checking in to go, to access one set of elevators or lifts with others that might be there to access an independent --- for the purposes of coming back down, to use another set of lifts; basements, were there basements, were there not basements.

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We then, my team and I --- I had a team of relationship managers with each of the hotels --- would then go about securing that additional information and that would then become inputs into our contract renewal discussions.

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Q. Given that we're talking over a period of 27 March through to the end of June, do I understand that that was an iterative process, that is to say, after hotels were stood up, when they were being considered for renewal, et cetera, there was an evolving understanding of the needs or the criteria that should be applied to procurement?

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A. That's correct.

Q. Is it correct to say that at the outset from your involvement there were in fact criteria to the effect that cooking facilities should not be available?

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A. I'm not aware, Mr Neal, I'm not aware of that.

Q. Is it your understanding that, at least at the outset, there was a preference for hotels not to have opening windows and balconies?

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A. That aspect in the initial stages actually never surfaced, to the best of my

knowledge; I was not aware of it. But it certainly became an issue re natural ventilation, access to windows that opened, balconies, from around the middle of April, from what I recollect.

5 Q. And you have state that it became an issue. How did it become an issue? How did that come to your attention?

10 A. Yes. So about two weeks prior to hotel contracts' renewal timings, about a couple of weeks prior to termination of contracts, we would canvass a fairly detailed discussion with our DHHS colleagues and source or seek from them what the essential criteria should be going forward in terms of subsequent renewals. And so, you know, it was a dynamic picture, it was a constantly evolving picture and as more knowledge is gained, you know, some of the criteria were tweaked accordingly as part of the decision-making process.

15 Q. If I understand correctly, the procurement of the hotels was on the basis of a month with a number of options after that?

20 A. Initially it was a month, renewal month on month on month. One of the great challenges we did have was to get an accurate handle on projected demand. It was a challenge for us, you know, right across the board. Everything from day-to-day arrivals of international travellers, to get an accurate sense of numbers of those who were actually arriving, you know, and as a consequence of that it was difficult to predict. It was a challenge to predict, you know, the amount of inventory that we would need to have ready, just in the event that you could suddenly have a surge of international arrivals or suddenly it peters out. So we had a very cyclical demand profile for the time that we were involved and it was a challenge to actually accurately determine the forward projections on demand.

30 Q. If there was anything such as typical, what sort of advance notice would you have and from where as to any incoming cohort and the detail that might have been associated with them, how many people, families, et cetera, dietary requirements? Was there a typical pattern there or did it range?

35 A. It did vary. Now, I had no direct involvement in quantifying the demand, if I could put it that way. I was effectively advised of possible, you know, demand profiles and then we would secure accommodation accordingly. There was a core group of accommodation that, you know, had worked well and continues to work well from a DHHS perspective, from our perspective in DJPR, and we would look to renew them. The point that I was --- that I omitted to raise earlier on was that the contract renewals were a mix of month on month and then fortnightly. And so as we began to better understand the demand profiling, we began to finesse the forward booking requirements for inventory. You know, it started month on month, exactly as you suggested, but then it became nuanced, so that we had some properties that were month a month and then essentially fortnightly renewal.

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Q. If I could just turn to an aspect of the question then, typically did you have

24 hours, 48 hours, a week, how much notice did you have of the incoming cohort?

5 A. Well, I suppose the best way I can answer that is contract renewals are done, as I was indicating, either month on month or fortnightly and we would make a decision and then lock the contracts in. Then, of course, there is a separate function, which is the activation or the standing up of respective hotels within the suite of accommodation inventory that we have contracted.

10 Q. Yes.

A. So that activation would very much be dependent on the day-to-day scenario that would play out on a demand profiling basis. My observations are, as a general rule, 24 hours prior to a hotel being activated we would generally look to advise that particular property that "Tomorrow you're going to get X number of travellers that
15 are arriving on this flight." Then what happens is there's an on-ground team consisting of a range of people. I wasn't part of this. My observations, you know, the DJPR representatives, the DHHS, the transport provider, who generally was SkyBus and/or VicPol, together with, periodically, the contracted security provider representative would all go and meet the hotel management, 24 hours prior, to
20 actually walk them through --- and this was a very, you know, the idea was to familiarise all parties associated with the hotel on logistics, you know, and everything from disembarkation, check-in, passage to the rooms, et cetera.

25 Q. Yes. Given that sort of turnaround, did you receive feedback from the hotel suppliers about any difficulties that that was causing?

A. On and off, on and off is probably the best response. Generally my observations were if there were issues, if there were little wrinkles that needed to be ironed out, my observations were the hotels dealt directly with either the DHHS on-ground
30 representatives or the DJPR or, you know, if it was transport related, conversations with the transport provider, et cetera.

35 Q. Did I understand your evidence to be that in terms of direct observations of these things, that was not something you did nor did you see it as your function to do; that is, the ingress and egress of people from quarantine hotels?

A. That's correct.

40 Q. Could I ask you to turn your mind now to the question of the way in which the contracts were administered. My understanding of your statement is that you say, or there was a distinction, rather, to be drawn between contract administration and the daily operational oversight of hotels. So perhaps you could tell the Board how you saw --- I beg your pardon --- what contract administration meant, in your term, and the relevant demarcation between contract administration and on-site operational
45 matters.

A. The contract administration that my team and I were responsible was principally

around a number of issues that we were always in discussions with accommodation providers, inevitably, and that concerned the commercial terms in the contract, accounts payable issues, any reconciliation complications, there were conversations around, you know, contract renewals themselves, many of the providers were very
5 keen to be part of the program, they were keen to ensure that, you know, they would be --- would be considered as part of subsequent renewals. And the other major conversation piece was --- I referred earlier to the varying demand profiles that we had to accommodate. We had a number of properties where we actually had to then -
10 -- in midstream, through a contract, had to vary room stock, for instance. If we suddenly discovered that there was an escalated demand for a particular property then we needed to re-contract additional rooms in order to accommodate that, despite the fact that we would have had a month-on-month renewal or a fortnightly renewal. So, you know, around 90 per cent of our task was really all around the commercials surrounding the contract.

15 The day-to-day issues around, if I could quote some examples, and these are my observations, really were all managed between the on-ground teams and representatives from DHHS, from DJPR, any of the other contractors we had on site. They ranged from, you know, menu issues or issues of dissatisfaction on food,
20 anything to do with cleaning, you know, issues related to security. They were, in the first instance, engaged at ground level between the hotels and the teams who were there and then, if matters required further resolution, they were generally escalated through our operations manager for Soteria, be it DHHS or DJPR, and it will get considered and hopefully resolved in that way. It was very rarely raised with my
25 team.

So we would --- as relationship managers, we made it a point that everyone in my team who had responsibility for a handful of hotels in the total suite of accommodation that we looked after, we would contact the accommodation fairly
30 frequently, probably once a week for every hotel that we had contracted, you know, we would engage in a conversation, we would try and identify if there were any issues that were concerning them and if something gets bubbled up to us, we would then look to pathway it through our DJPR, you know, commander for Operation Soteria, to the relevant part of either our Department or DHHS, as required.

35 Q. I think in your statement you make a distinction between your Department generally and your team and, if I'm understanding you correctly, you're saying in respect of your team you saw your role as the commercial role; that is, to see whether the rates were appropriate, the stock was available, those sorts of questions. And
40 when you talk about then contract administration, those are the characteristics that you are talking about, as opposed to the day-to-day activity in the hotel. Is that a fair distinction?

45 A. That is. So my observations were the hotels in reality actually dealt with the frontline teams from the Government that were there, from DHHS and DJPR, and dealt very quickly, face to face on the ground with a whole lot of operational issues that may surface.

Q. Could I take you back to the terms of the contract that actually dealt with the issues --- the terms of the contract that you procured with the various hotels. I think you deal with that in your statement. The criteria that you particularly extract in your statement are at paragraph 18.

A. Right.

Q. There you are talking about the formal agreement, the contracts that were entered into with the hotels. In particular, you extract from the --- this is from the formal terms of the contract we're talking now.

A. Yes.

Q. You're familiar with those formal terms, are you not?

A. I am, yes.

Q. You isolate a number of relevant requirements in the formal agreements, the first of which is clause 2.1(d), which appears at paragraph 18(a) of your statement, which is in reference to cleaning requirements, albeit that there is a qualification in relation to COVID-19 room-cleaning requirements.

A. Yes.

Q. So if we can stay with the first part of that idea, the cleaning requirements, the contracts that you entered into required the hotels to be responsible for, to quote the terms "thoroughly cleaning and disinfecting at a minimum" at the start of a nominated person's stay and at the end of a person's stay, to a standard which was "consistent with the most recent recommended public health standards in respect of COVID-19". So I want to draw a distinction between what I'll call the standard cleaning operations and the COVID-positive cleaning operations.

The clause to which I have just referred makes reference to a "standard consistent with the most recent recommended public health standards in respect of COVID-19". Was there such a standard that you were aware of?

A. We had to move on best available information at that time, when we were contracting the first tranche, as you can imagine, having first found on 27 March that there was a mandatory quarantining requirement which was to take effect on 29 March. So we had around 48 hours or less to contract the appropriate hotels.

Q. Yes.

A. Now, on 24 March, I was made aware by the hotel associations that the Commonwealth Department of Health had produced a detailed memorandum or a leaflet of three or four pages which dealt specifically with COVID-19 and the hotel

sector, and the accommodation associations were in receipt of that and I was subsequently made aware that certainly the hotels had access to this information. And that brochure dealt with a range of issues. It dealt with specific cleaning prescription and how to clean a room and it also dealt with some level of information and detail in relation to the personal protective equipment that was to be used and some other information on the epidemiology of COVID-19 together with personal hygiene and self-isolation issues. So that was a leaflet that I knew the hotels had access to as of 24 March and so we, you know, moved on the basis that that sort of information was available at that time.

Q. Is that to say that the formula of words that are used here in terms of what I'm saying is general cleaning, "to a standard consistent with the most recent recommended public health standards in respect of COVID-19", you say that the Australian Hoteliers Association had provided hotels with the leaflet to which you have referred and that you regarded that as being "the most recent recommended public health standards in respect of COVID-19"?

A. The onus, first and foremost, with the contract was for the suppliers to make sure that they have taken every reasonable effort to access information, to satisfy themselves that they were, you know, consistent with the practices and the recommended public health standards in respect of COVID-19. So we have moved on that basis that, first and foremost, it was the responsibility of the supplier to actually avail themselves of that relevant information. By way of background, I was aware that some of that type of information was accessible to the accommodation sector.

Q. In the form of that leaflet to which you have referred?

A. Yes, correct.

Q. So that part of the contract shouldn't be read as suggesting that there was an objective standard to which the hotel could have referred but the hotels needed to satisfy themselves about what the status was and may have been informed by the leaflet?

A. That's correct. Not only that, I'm sure that the Department of Health and Human Services would also have the appropriate information in relation to that. But it would, you know, the burden of effort was really an opportunity for the supplier to ensure that they had access to relevant information that allowed them to take comfort in the fact that they were compliant.

Q. In my terms, the contractual onus was on them?

A. That's correct.

Q. In respect of the COVID-19 cleaning regime --- sorry, in terms of general cleaning, did that, to your knowledge, remain the contractual obligation through the

course of your involvement up to the end of June, that is the hotels were responsible for their general cleaning?

5 A. Yes, indeed. Yes, to my knowledge, yes.

Q. And in respect of what I'll now call the specialised cleaning in respect of COVID-19-positive rooms, that was an obligation that the Department undertook or that was an obligation which the Department was responsible for and paid for?

10 A. That's correct.

Q. Now, was that in your particular remit, as you saw it, to organise and pay for that specialised service?

15 A. No, it was not.

Q. And in whose remit was it?

20 A. It --- look, if we had any issues in relation to that, we would be elevating that to our Agency Support Commander for Operation Soteria, Ms May, Rachaele May, for her to then pathway to the necessary part of the Department that looked after it.

25 Q. Perhaps if I can put the question this way: how, to your knowledge, was the specialised cleaning actually organised?

A. To be honest, I was not involved in the organisation. I can't really comment. It would be difficult for me to speculate on that.

30 Q. I ask you then, staying at that same paragraph 18(d), and we are talking still about the obligations on the suppliers, you are quoting clause 2.1(h) here of the formal agreements, and you there set out at (d), on pages 5 and 6, obligations of the hotel in respect of training and the provision of PPE. I'm paraphrasing that.

35 A. That's correct.

Q. Now, was it your understanding as a matter of contract that the obligation to be training staff in respect of COVID-19 and infection control was an obligation of the hotels?

40 A. Yes, it was.

Q. And that the provision of PPE and equipment was also an obligation of the hotels?

45 A. Yes, it was.

Q. Could I just ask you to clarify: the way in which you describe those obligations in your statement, if you can look particularly at paragraph 18(d)(ii), you see the way it

is set out there, at the end of (ii), the concluding clause there is:

.... including but not limited to in relation to COVID-19

5 That may suggest that that reference is only relevant to PPE. Do you understand my point?

A. Yes, I do. It does say "are provided with personal protective equipment in accordance with". Yes.

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Q. Could I ask that document DJP.104.004.8159 and then if we could have page 8160 ready, please, if that could be called up. If you go to page 8159 first, this document, Mr Menon, I understand, is the standard set of terms and conditions that went with the hotel contracts?

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A. That's correct.

Q. What we have just been talking about has been otherwise extracted in your statement; what we are talking about there is clause 2.1, where you see "Supplier's Obligations"?

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A. That's correct.

Q. If we could go over to page 8160, if you could just focus your attention on clause 2.1(h) there, Mr Menon, just to be clear, the point of my taking you to this is that the way in which it's presented in the contract seems to be slightly at odds with the way in which it's been presented in the statement. I'm not suggesting that's sinister, I'm suggesting it seems to give a different understanding, in the sense that the words in (h) in the contract, "including but not limited to in relation to COVID-19", I would suggest are a general reference to the preceding clause, they are not just attached to clause (ii)?

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A. Yes. I'm just reading it now. Just let me

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Yes, I think you are right. You are correct.

Q. In any event, what's stated in the formal contract to which you have just referred was your understanding of the obligation?

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A. Yes, it was.

Q. Again, could I ask you, just looking at the terminology used there, the obligation on the supplier was in respect of, firstly, adequate training and then the provision of PPE "in accordance with the relevant public health standard, including but not limited to in relation to COVID-19". Again, could I ask you, in respect of those words "including but not limited to in relation to COVID-19", did you understand there was some objective public standard that then existed in relation to that?

45

5 A. We wanted to ensure that the suppliers, you know, took all possible efforts and endeavours to ensure that they complied with, you know, aspects of public health standards in relation to COVID-19. So, you know, assuming there was, I do not have intimate familiarity with what that public health standards were, but it was certainly an obligation that we wanted to ensure the suppliers undertook before they actually signed up for the mandatory quarantine program.

10 Q. So I think the answer is effectively the same as you previously gave me in relation to cleaning; that the Department's contract cast the onus on the hoteliers to satisfy themselves that there was a public health standard in relation to COVID-19 for training and PPE?

15 A. That's correct.

Q. And the Department wasn't able at that time to say, "That standard is to be found in a particular place" or "The Department regards this particular document as constituting that standard"?

20 A. We had not included that level of prescription in the contract. So we have left it and ensured that the supplier undertook the efforts to ensure compliance.

25 Q. At that point in time were you in a position to say if there was some accepted public standard in relation to COVID-19 for training and PPE?

30 A. Well, there was the --- I could not comment on that with any certainty, other than what I was drawn attention to in terms of what the Commonwealth Department of Health had provided in terms of cleaning, in terms of the necessary PPE that accompanied it. But certainly beyond that I didn't have any other direct indication.

Q. And to be clear, that's the leaflet that you understood the --

A. That's correct.

35 Q. --- the Australian Hoteliers Association had provided?

A. Yes.

40 Q. Thank you. That document can be taken down.

In relation to the obligation for cleaning of hotels, just pursuing that point, on the basis that the contract described it the way that it did, you dealt with it in your statement at a number of paragraphs, 50, 56 and 59. If you go to those paragraphs, please, and if you just want to refresh yourself about those paragraphs.

45 A. Would you repeat the paragraphs for me, please?

Q. Yes, certainly: 50, 56 and 59. Particularly paragraph 59, if you would like to refresh your memory about that.

A. Okay. Thank you.

Q. At paragraph 59 you state:

We only received clarity and detail with regards to required cleaning and disinfection procedures from DHHS in mid-June.

You give the title of the document. And then you said on 17 June that was circulated to hotels.

Could I just ask you to explain, for the purposes of the Board, the obligation that you are referring to, I take it you are referring to the DHHS, to be clarifying cleaning and disinfection standards? How did that come about?

A. Well, it came to us as a request through our Agency Support Commander, from the DHHS through our Agency Support Commander, to have this circulated to hotels because this had significant detail and level of prescription in terms of cleaning and disinfection. DHHS were keen to ensure that all the hotels actually received a copy of this and we were told that they are to comply with it. And you will --- in the email that was subsequently forwarded on 17 June, the cover note email from myself to all the hotels clearly indicated that it --- that they have an obligation to comply.

Q. That's an obligation to comply with general cleaning standards or a specialised cleaning standard?

A. The standards as outlined in the document from DHHS, which was the document titled "Procedure for Cleaning Quarantine and Quarantine Red Hotels".

Q. That's a particular procedure in respect of "red hotels"?

A. Yes.

Q. So not necessarily applicable to all hotels, it seems to follow?

A. Well, it was those in quarantine and quarantine red hotels as well.

Q. Could I take you back to paragraph 50 on this issue, where you were being asked about who in DJPR was responsible for giving directions to hotels. You state there:

My team and I would have discussions with the hotels which generally concerned contract administration issues or other matters as directed in [Notice to Produce] questions 23 and 24. My team did not provide directions or directives to the hotels except for the circumstances where we were instructed by DHHS to provide directions to hotels concerning cleaning as set

out in my response to the [Notice to Produce] question 29 below. I am not aware of which DJPR personnel were responsible for the provision of directions to hotels more generally.

5 Could I just ask you again: what was the nature of the clarification, if it was not just
the document you've referred to, the nature of the clarification that DHHS or the
directions that they were giving to hotels in respect of cleaning? My starting point is
to understand that the hotels have to take that obligation on board themselves and I'm
10 trying to understand what DHHS was then obliged to do or were doing, in your
view?

A. Well, the limit of our engagement and involvement was to ensure that this
important information in relation to cleaning, that DHHS had compiled, was actually
distributed to the hotels so that they (a) will have guidance in terms of what is
15 acceptable for cleaning and disinfection; and (b) there was certainly a clear
indication to us for the hotels to ensure that they complied with those guidelines.
And so we reflected that. And, in fact, we subsequently got responses from all the
hotels in terms of having read it, having understood it. A couple of them had some
questions that they had raised, which we then subsequently relayed back to DHHS
20 for clarification.

Q. Prior to the 16 June document, to your knowledge had the generalised cleaning
and the specialised cleaning to which we have been referring, had that been
proceeding satisfactorily according to the contract, that something changed as of 16
25 June?

A. Not to my knowledge. To my knowledge, the cleaning, you know, was --- there
was a contractual obligation on the part of the supplier to ensure that they met
whatever the nationally accepted standards were for COVID-19. So, from my
30 perspective, it was not something that I was administering actively in that sense. We
were in contact with hotels on a regular basis to discover whether there were any
issues that were of concern. But I think I had referred earlier on that a lot of the
day-to-day issues were actually managed on the ground between the on-site
management teams from both DHHS and DJPR and the hotels.

35 Q. Thank you. Could I just take you back to paragraph 49, where you're talking
about the day-to-day management or how that day-to-day management of the hotels
was carried out. And you explain that your team --- so that's not DJPR generally but
your team within DJPR --- had this portfolio approach where people within your
40 team had a suite of hotels that they looked after. That's your portfolio approach.

A. That's correct.

Q. And then you say in the second part of paragraph 49:
45

*As part of their role (and in addition to fulfilling the functions set out in [a
previous question]), each member acted as a conduit to engage with each of*

their respective hotels on a regular basis (... once or twice per week) to ascertain if there were any issues requiring facilitation, support or clarification and also relay information where required or requested by the broader Operation Soteria team within DJPR.

5

Could you assist by just clarifying what sort of further information that was being conveyed, required or requested by Operation Soteria?

10 A. Well, the example, I think the best example, would be the correspondence that DHHS wanted distributed on 16 June, the correspondence we received on cleaning for hotels. That was passaged to my team through our Agency Support Commander and through DJPR management hierarchy for Operation Soteria to me, and we then took that and distributed it as per what was requested of us. So that's an example of the sort of information that will get, you know, communicated.

15

Q. If I can try and capture that more generally, to your understanding you weren't particularly aware of day-to-day issues of this sort in relation to cleaning but others, in particular DHHS, may have become aware and that they raised that awareness with you and that in response to that there were messages passed back down the line, if I can put it that way, back to the hotels. Is that what I understand you to be saying?

20

A. Yes. So if DHHS, for instance, had particular matters that they wanted clarified, they would raise it to the DJPR Agency Support Commander and/or her team. That will then come to us, right, and say, "Here is XYZ that we want clarification for, could we just find out?" More often than not, that was actually done directly with the on-site teams from what my observations were.

25

Q. From your point --- in your role, do I understand that you were never visiting or at the particular hotels that were engaged?

30

A. That's correct.

Q. Could I just clarify with you, Mr Menon, you referred earlier to the fact that the spreadsheet that you had compiled had criteria in it in relation to a number of matters, including catering, accommodation availability, et cetera, and security. Was it part of your function at all to understand the role or provision of security to the hotels?

35

A. No, it was not.

40

MR NEAL QC: If the Board pleases, those are the matters that I wish to raise with Mr Menon.

45 CHAIR: Yes. Mr Moses?

MR MOSES SC: Thank you, Madam Chair. Mr Menon --

CHAIR: Before you proceed, Mr Moses, if you could give me an indication --- I'm not aware yet of what matters you have identified as appropriate to raise.

5 MR MOSES SC: That email was sent through to Counsel Assisting yesterday, Madam Chair. But there are a number of areas. The first relates to the issue of what role the Department of Jobs, Precincts and Regions has in relation to the selection of hotels and ensuring that they were able to deal with the individuals who were COVID-19-positive. That was one of the issues that we examined in a note that we
10 sent through to Counsel Assisting yesterday. The second issue related to those matters pertaining to contracts or arrangements that was understood by the Department of Jobs, Precincts and Regions as to what security was to be provided at those hotels as well; and, thirdly, matters pertaining to interaction between the Department of Health and Human Services and the Department in relation to health
15 issues that were being put in place in relation to these hotels.

These are all matters that directly impacted upon those whom Unified of course contracted or employed, particularly with the Rydges Hotel.

20 MR NEAL QC: Madam Chair, may I just try and assist there? The particular points --- and I'm not sure if we are at cross-purposes or not --- the particular points of which I'm aware which were conveyed by email yesterday, at 5.38 pm, are as follows --- there are three:

25 *What due diligence DJPR undertook when procuring hotels for use as part of the quarantine program and how security services were to be used in relation to the hotels; secondly, what considerations were given by DJPR in relation to the induction of security guards and the provision of on-call advice; and, thirdly, what supervision was being undertaken by DJPR in relation to the*
30 *hotels involved in the Hotel Quarantine Program.*

Given the evidence of this witness, I think reasonably clear, that the hotel security services were not within his remit, we would respectfully submit that the first two points to which I have just referred, to the extent to which they are dealing with
35 security services are not appropriate for cross-examination.

MR MOSES SC: We would say, with all due respect to Counsel Assisting, there are documents that my learned friend has not cross-examined the witness on, which cut across the propositions; the documents that we were provided late last week in
40 respect of this particular witness, there are hundreds of documents, some key documents my learned friend has not taken the witness to, which contradict the assertion that the witness has just given.

Now, if this is a search for the truth in respect of what's gone on here, we are entitled
45 to test the first proposition because you have heard nothing, with all due respect, Madam Chair, about what due diligence was undertaken by the Department, given that its primary focus, of course as with all Government Departments, is public

safety.

Now, there are documents I wish to take the witness to, we have notified those assisting our friend as to what those documents are, and I will take the witness to
5 documents that demonstrate that security was an issue that was certainly the subject of communications with him.

So he may assert something but that doesn't mean it's true or something that's credible. So I stress that we be permitted to examine on those issues that I have
10 highlighted. And if the discussion is to take place any further, I would ask that Mr Menon not be present for the debate because it would not be appropriate in those circumstances. We are entitled to put this to the witness, so that it will assist you, Madam Chair, in respect of the findings that you need to make.

CHAIR: All right. Perhaps it is appropriate, Mr Moses, if you will want to take Mr Menon to particular documents, to do that off screen and have that discussion with Mr Neal what it is exactly --- which documents exactly it is that you want to have put to Mr Menon and to also establish that those documents are not going to be contentious in terms of --- identifying information, of course, is one of the concerns
20 that I have. So I will take a short --

MR MOSES SC: Madam Chair, just to let you know, so my friend knows, we sent that email at 9.28 am this morning, so he may not have gone through it, but these are all documents that are Mr Menon's documents, that we were told were his
25 documents. So I will speak to my learned friend.

MS CONDON QC: Madam Chair, Ms Condon on behalf of the Department of Jobs, Precincts and Regions. I would ask that those documents are specifically identified by counsel for Unified so that we too have some notice as to what those matters are
30 proposed to be questioned Mr Menon upon.

CHAIR: Yes, of course, Ms Condon.

MR MOSES SC: That is a matter for the Inquiry. If Madam Chair wants to send the email that was sent by my solicitors to the Inquiry to that witness' or the
35 Department's lawyers, then that is a matter for you, Madam Chair, you can direct ---

CHAIR: Yes, and I have already indicated it is appropriate, as counsel for the Department, that Ms Condon also be apprised of those documents, Mr Moses. So for that purpose I will go off the virtual bench, as it were, and allow for that opportunity to be given both to Mr Neal and Ms Condon.
40

Just for the purposes of those following the proceedings, I notice it's 11.05 now, so if I perhaps indicate that I will take a 30-minute break now, to allow parties to have ---
45 the relevant and affected parties to have those discussions. If it is going to be longer than the next 30 minutes, perhaps if someone could give me that indication.

MR MOSES SC: Madam Chair ---

CHAIR: Mr Menon --

5 MR MOSES SC: --- those discussions should be just with myself and Counsel
Assisting. I do not think it is appropriate that I have discussions with counsel for the
Department about her witness. I can have discussions with Counsel Assisting. But I
think from a forensic and propriety view, it is not really a matter for me to be having
10 discussions with counsel for the Department. That is a matter for her to take
objection if she wishes to in opening.

CHAIR: All right. Well, I will leave that decision for Mr Neal as Counsel Assisting
as to allow Ms Condon to understand what documents are going to be produced.

15 MS CONDON QC: Madam Chair, just so it's clear to counsel on behalf of Unified,
that wasn't what was being suggested, simply that we have some proper notice as to
the documents that are proposed to be taken to Mr Menon.

CHAIR: Yes. I'm agreeing with that process, Ms Condon.

20 Mr Menon, I'm not sure how much of that you have understood in terms of the
exchange between the various representatives of counsel for their parties but there's
just some discussion going on about documents that you may be taken to shortly and
it's appropriate that that discussion happens off screen, as it were. I have just
25 indicated that I'll take a 30-minute break whilst those various discussions happen. So
that means you too, Mr Menon, can take a 30-minute break and you'll be kept
advised of when you're going to be required to be back on screen again.

A. Thank you, Madam Chair.

30 CHAIR: As I've said, I'll take a 30-minute break now and allow those matters to be
discussed.

MR NEAL QC: If the Board pleases.

35

ADJOURNED

[11.09 AM]

40 **RESUMED**

[11.37 AM]

CHAIR: Yes, Mr Neal.

45 MR NEAL QC: Thank you, Madam Chair. I have had some brief discussion with
Mr Moses. The email to which he referred unfortunately hadn't come to me but to
the solicitors assisting the Inquiry, but I have now established what that email is.

There are, I think, nine or so documents referred to in the email. They are not documents from the tender bundle that has been --- that were exhibited to Mr Menon's statement but to the category that is referred to as "Other documents" in the hearing book.

5

In the time available it hasn't been possible for me to establish the relevance of the documents to the issues that Mr Moses has raised. I'm not saying they are not, I am simply saying I haven't had that opportunity.

10 What also occurs is that the documents have relevance, I think, to Ms Harris' client and Ms Condon's client and, in fairness, the identity of those documents should be shared with them and they should be given the same opportunity to consider them. I think the practical course is that, first of all, that be done; that Ms Condon and Ms Harris be given a copy of the relevant email.

15

My suggestion, Madam Chair, would be that, given the time, we stand the matter down until 2 o'clock. It may be that with the benefit of a little time there can be some understanding about why the documents are relevant and whether they should be put, but that is not something that can be done instantaneously, unfortunately.

20

CHAIR: Yes.

MR MOSES SC: Madam Chair, there are other questions that I can put to the witness now that don't touch upon those documents that go to matters pertaining to the issues that have been identified in [indistinct], in particular on the question of the due diligence undertaken by the Department when procuring hotels to be used as part of the Hotel Quarantine Program. There are questions that I can put, that I could deal with now, before addressing the questions that relate to matters that arise out of the evidence of Mr Menon.

30

If there are objections taken then my friend can object as I am putting them but I don't think they should be controversial, I would think.

CHAIR: All right. And they don't go to those documents that are at the moment the subject of concern, Mr Moses?

35

MR MOSES SC: No.

CHAIR: All right. I will grant you leave to proceed with those matters, Mr Moses, as long as, as you proceed, I'm satisfied that they are indeed matters of relevance and assistance to the Board. But I will let you at least commence.

40

MR MOSES SC: Thank you, Madam Chair.

45

CROSS-EXAMINATION BY MR MOSES SC

MR MOSES SC: Sir, you have given evidence that your role, part of your role was to identify and secure hotels to be used in the Hotel Quarantine Program; correct?

5 A. That is correct.

Q. And what you have said in your evidence is that you received a call from the Secretary of the Department, Mr Phemister, around midday on 27 March, informing you that he wanted you to ascertain which hotels would be available to provide
10 accommodation as part of the program, including their capacity to provide meals, security and cleaning services; correct?

A. That's correct.

15 Q. And you told the Inquiry that you were not responsible in relation to the issue of dealing with the contracting of security services; correct?

A. That's correct.

20 Q. Who was responsible, sir?

A. I'm not familiar. I would not want to speculate.

Q. So you don't know who within the Department was responsible for that issue;
25 correct?

A. Correct.

Q. Thank you. Now, at the time --- I'm looking around late March to early April ---
30 did you understand that the role of your Department was to assist the Department of Health and Human Services to identify and secure hotels to accommodate those who may be vulnerable and require accommodation for self-isolation, including by reason of having been tested for COVID-19?

35 A. That's correct.

Q. And would you describe the role of your Department, being the Department of Jobs, Precincts and Regions, as one of a support role to the Department of Health and Human Services rather than the lead role?
40

A. Well, initially, in the first tranche of hotels we had to take more of a leadership position in that space, whilst the Department of Health and Human Services were absolutely with us in all of the conversations with the accommodation associations, the development of the expressions of interest process, the calling of accommodation
45 providers to volunteer some or all of their property, so whilst DHHS was, you know, working with us on all of that, the first tranche we were up against a timeline, as I mentioned previously, it was a constraint and a challenging timeline, so we needed

to take the initiative to secure the first tranche but subject to that, from my recollection, we had something around five opportunities commencing mid-April for renewals of hotel contracts, up until 30 June and DHHS played a very significant role in the decision-making subsequent to that.

5

Q. Do you understand, do you accept the power resided with the Chief Health Officer and the Department of Health and Human Services in respect of this program and there was no legislative power the Department of Jobs, Precincts and Regions had? Do you understand that? Do you accept that?

10

A. I don't know enough about the powers to make a comment one way or another. I was tasked by my Secretary to fulfil a role and that is the role I performed.

Q. And did you understand that part of your role was to ensure that public safety was the paramount focus of what you were doing, sir?

15

A. Yes.

Q. Thank you. Now, on 27 March did the Secretary of your Department inform you as to whether he had consulted counterparts in any other States or Territories in relation to how they were dealing with the establishment of their Hotel Quarantine Program?

20

A. I was not aware of whether such discussions had taken place.

25

Q. Did you speak to your counterparts in any other States or Territories in relation to how they were dealing with the establishment of their Hotel Quarantine Program?

A. I had a call from, I think, the New South Wales representative involved in that program, who actually wanted to share ideas about how we contracted hotels. It was a brief conversation. But that's the extent of my recollection.

30

Q. Were you informed by the New South Wales public servant who contacted you that in New South Wales that police were taking the lead role in relation to security of hotels and using contractors to supplement what the police were doing?

35

A. I do not recall any of that level of detail.

Q. Okay. I asked you a question earlier about what was the role of your Department was and I think you accepted the proposition that it was assisting the Department of Health and Human Services in relation to locating hotels; correct?

40

A. That's correct.

Q. Your Department had no expertise in how to deal with persons with infectious disease; correct?

45

A. To the best of my knowledge.

Q. You had no expertise in relation to how to deal with persons with infectious diseases; correct?

A. That's correct.

Q. And did you seek the advice of the Victorian Department of Health and Human Services as to what --

MS CONDON QC: Madam Chair, I seek to object to these questions. They go well beyond the scope of the due diligence that my learned friend indicated he was going to ask Mr Menon upon, about contracting hotels.

MR NEAL QC: Might I say, Madam Chair, my apprehension was in the same direction, that this is becoming a much broader conversation than was indicated.

MR MOSES SC: Madam Chair, this goes --- Madam Chair, could I be asked to address in response, that this goes right to the heart of due diligence, and that is that in relation to this Department being responsible for locating hotels to place individuals in, all you have at the moment before you is this witness saying that he understood that the Hotels Association had a brochure from the Commonwealth Department of Health and no evidence as to what advice, if anything --- and there are some documents that we'll show him --- from the Victorian Department of Health as to what they were advising the support agencies hotels needed to have in order to quarantine people. That goes to the exemplar of what due diligence is. It can't be seriously suggested that he has satisfied his obligations by being aware that there was a brochure from the Department of Health that he doesn't appear to have read, there is no evidence of that, that the hotels had. For us not to be permitted to test this leaves a gaping hole in the evidence before the Inquiry as to what he was doing.

MR NEAL QC: With respect, again, the witness has told very directly what he did do and the limitations, obviously, of what he did do. It seems my learned friend is now asking him about all the things that he didn't do but he's not asserting anything beyond that he did what he did. Now, if what he did, in my learned friend Mr Moses' submission, is not consistent with due diligence, that is apparent to you on the evidence and by submission. To continue to be asked, "But didn't you do this?" or "Didn't you do something else?" or "Were you asking other people?", seems simply to ask him to repeat the fact that he didn't do more than he said he did.

MR MOSES SC: I don't want to get into a Monty Python sketch here with my learned friend.

CHAIR: I'm having trouble hearing you, Mr Moses.

MR MOSES SC: I said I don't want to get into a Monty Python sketch with my learned friend. There is a document in the documents we have been served with

from this witness in which he had formed the view by 2 April that the Department of Health did not know what they needed or wanted.

5 CHAIR: Mr Moses, you are now traversing the area that it has been already discussed needs to have some more discussion among counsel. So if that's where you want to go next then it's appropriate --

MR MOSES SC: Madam Chair, I can move on to another question and come back to that later. I can move on to another question.

10 CHAIR: All right. And what's what other question?

MR MOSES SC: The question related to this, and that is he gave some evidence about a discussion --- this is during questioning by my learned friend --- about a discussion as to what criteria was discussed in relation to hotels and he gave some evidence about that. We want to put to him a number of propositions arising from that discussion as well as eliciting who was present for that discussion because no evidence was led about that.

20 CHAIR: I'm afraid it's just a bit too obscure for me, Mr Moses, I still can't follow where it's going. And I understand you might be concerned, given the presence of Mr Menon, but you will just need to be more explicit with me or otherwise it's a matter that --

25 MR MOSES SC: I understand. So the issue related to this in terms of the criteria we looked at, he talked about rooms, sizes of rooms. What I want to ask him is: did he undertake any assessment of the criteria about rooms having access to fresh air, issues pertaining to whether there was ingress and egress points, whether there was any consideration in relation to whether the facility, such as the Rydges Hotel, was an appropriate facility to put COVID-19-positive individuals in, given the evidence of Professor Grayson in this Inquiry that such accommodation needed to be, in effect, set up as if it was an infectious diseases ward. I just want to know, in terms of the criteria, whether that was part of the criteria that was being discussed rather than just bricks and mortar.

35 CHAIR: Do you have anything you want to say about that, Mr Neal?

MR NEAL QC: Well, again, I think the plain state of the evidence is, Madam Chair, that he said he had a fairly limited understanding of the roles of anything else beyond: are rooms available, how much they were costing, when they could be brought up. He, I think, directly said in relation to security he had no particular understanding of security, what the role of security was. I would have thought, with respect, it's self-evident that he has not traversed the issue of infection control, and the like, which Mr Moses seems to want to put to him which, it is apparent from the state of his evidence at the moment, he didn't turn his mind to nor did he see it as within his remit to do so nor did he have the capacity to do so in terms of his personal expertise.

CHAIR: I must say, Mr Moses, my understanding at the moment is the state of the evidence of Mr Menon with respect to those matters that you have just raised is that Mr Menon has indicated that with respect to the first tranche of hotels, and clearly
5 constrained by the fact that there was less than 48 hours to identify appropriate hotels, that his role meant that he sought to identify the hotels but that it was the ultimate call of the Department of Health and Human Services that provided the criteria. And I have understood Mr Menon's evidence to be the criteria that was provided to him, not necessarily in the first tranche but certainly when it came to the
10 renewal of contracts, was room type, configuration of rooms, layout of rooms, access to natural ventilation, windows and balconies, controlled areas for recreation, layout of check-in areas, access to lifts, what was available in terms of basements. That's what I have understood the evidence to be. So I'm not sure how much further you think that there will be value in pressing Mr Menon beyond that, Mr Moses. If
15 there's something I'm missing, please enlighten me.

MR MOSES SC: Madam Chair, he did give evidence about access to ventilation being one of the issues.

20 CHAIR: Yes, I have understood that.

MR MOSES SC: I want to try to understand, if he says that in looking at the hotels' suitability through the prism of infection control wasn't something that he was tasked with, even though he was the one who was recruiting the hotels, who did he
25 understand was doing that within the Department of Jobs, Precincts and Regions or the Department of Health and Human Services? Because without --- this is a very serious matter.

CHAIR: All right, I'll let you put that question. Yes.

30 MR MOSES SC: Thank you.

Mr Menon, on the question of ascertaining whether a hotel was suitable, was suitable, bearing in mind that this was dealing with individuals who may have
35 infectious diseases, who was responsible for assessing whether a particular hotel should receive a contract because they could deal with persons who either had infectious diseases or may have?

40 A. The decision --

Q. Do you know --

A. Well, the established practice that I observed and that I was involved in was that, as Madam Chair had alluded, in the first tranche of hotels we were time limited, we
45 had to move quickly with best available information, but as of around the middle of April --- there were around four or five other occasions when we had to have a conversation between DHHS and DJPR representatives in relation to renewing hotel

contracts and in those conversations there were specific criteria that DHHS had outlined were, you know, either essential or desirable for hotels in order for them to be within the consideration set for contracting. So --- and the list of issues are exactly as per what Madam Chair had actually mentioned a while ago, the ones that I recall. That is not to say that this is the exhaustive list but these are the main, I guess, features, if you want to use a word to describe it, that would be important. And it was, most definitely room size; room configuration; you know, access to windows for natural ventilation, balconies; basements; ingress/egress challenges; elevators, whether ideally, we could have separate or the same, you know; and what the issues were. Those were a kind --- were included in a suite of issues that my team then actively were tasked to go canvass, to have a look at the hotels that we had currently quarantined, the ones that we may wish to quarantine, to see which ones had what. So we did an audit, we brought that back and DHHS and DJPR had the opportunity at contract discussion time to actually have a look at those specific elements. And then DHHS holds significant sway in terms of then determining which hotels would be suitable for re-contracting.

Q. Okay. Are you finished your evidence on that question, sir? Have you finished?

A. I have, yes.

Q. I will ask you the question again then. At the commencement of this program when hotels were chosen who was dealing with the issue, not in mid-April, I'm talking about at the beginning when people were first brought into hotels, who was looking, in the initial contracts, at whether these hotels were appropriate from an infectious disease control process? Was there anybody looking at it, to your knowledge?

A. To my knowledge, I'm not aware of who may or may not have been looking at that. What I am aware of --- but what I am aware of is that the Department of Health and Human Services, even from the first tranche of hotels, were involved in the entire process of identifying hotels as well.

Q. Do you know who from the Department of Health and Human Services was doing that, sir?

A. As to who it was?

Q. Yes, sir.

A. Yes, [Redacted] was the first individual, the Director of Precincts in the Department of Health and Human Services, and we also had [Redacted] who was involved in this process ---

Q. So did they tell ---

A. --- (overspeaking) --- in various degrees in assisting in securing and identifying

these hotels.

Q. Did they tell you, did you receive a communication from them before you signed hotels on that they were content with the infectious disease controls for those hotels before those hotels were signed on?

A. I'm sorry, I'm having difficulty hearing you.

MS CONDON QC: Sorry, Madam Chair, I hesitate to interrupt my learned friend. But he may not be aware of the Practice Direction that was issued by the Board yesterday evening as to identification of individuals who are below a certain level.

CHAIR: Yes.

MS CONDON QC: So I just perhaps forewarn him that he needs to tread carefully.

MR MOSES SC: [indistinct] Madam Chair, but the witness was --- the witness was the person who identified them. If he wasn't meant to do that by way of saying in terms of what positions individuals held, that's something for him. But I don't know the answer to his questions so he has to provide the answers, obviously.

MS HARRIS QC: Madam Chair, can I also say, because we haven't had notice of this line of questioning, I'm not familiar with whether those people should or should not be redacted from the transcript, for example, under the Practice Direction and I would ask that that not be published while we can take those instructions, please.

CHAIR: Yes, certainly.

MR MOSES SC: Can I ask this question. I'll withdraw the last question. I'm going to ask this question.

Do you accept that, Mr Menon, there is no document that has been produced --- I withdraw that.

Do you accept that there is no document that was sent to you before hotels were signed on to this program that stated anything from the Department of Health and Human Services that they were content with these hotels being engaged from an infectious diseases analysis?

A. I didn't receive any such document that I recollect.

Q. Thank you. And what about the Rydges Hotel? Were you aware that the Rydges Hotel is where COVID-19-positive individuals were to be kept?

A. Yes.

Q. And did you consider in relation to that hotel whether there ought be some

consideration given by an infectious diseases expert to ascertain whether that hotel should be used for that purpose?

5 A. Well, we had an obligation to identify the hotel. We --- to the best of my recollection --- did recommend that hotel as a COVID-positive hotel through the State Control Centre, and to the best of my recollection I think there was no issue of concern expressed at that time. We had no DJPR staff on site managing anything in that hotel, it was entirely managed by DHHS. So any of those questions are things that I cannot reasonably answer.

10 Q. Thank you. And is this the position in relation to the brochure that you gave evidence about in answer to questions from Senior Counsel Assisting, that was a brochure from the Commonwealth Department of Health that you said the Hotel Association had indicated to you that they had received. Have you read that
15 brochure?

A. Yes, I have.

20 Q. Where is it?

A. As in where is it now?

Q. Yes.

25 A. I've got a copy here.

Q. That brochure, was that a brochure produced for the purpose of hotels dealing with infectious diseases?

30 A. To the best of my knowledge, it was passed on to me by the Accommodation Association of Australia, to say that, you know, the operators now certainly can have access and, you know, can access this document and get some ideas and indications as to, you know, the information that was there for cleaning, including PPE.

35 Q. But I'm just asking you the question: when you read the brochure, did you understand that to be a brochure produced by the Commonwealth Department of Health specifically for hotels?

40 A. To the best of my knowledge. That's what I understood it to be. I may be wrong but that's what I understood it to be.

Q. Do you still understand it to be that, sitting here today?

45 A. Yes, I do.

Q. Thank you. Now, your team was responsible for managing the contracts with hotels; correct?

A. That's correct.

5 Q. And the daily operational management responsibilities for hotels, that lay with the Department of Health and Human Services?

10 A. No, I wouldn't necessarily construe that. So we had management responsibility of the contracts and the day-to-day management of issues that bubbled up really took place on the ground between the DHHS representatives, the DJPR representatives and the hotels concerned.

15 Q. But do you know who was responsible, ultimately, for the daily operational management responsibilities of hotels in the Hotel Quarantine Program, which department?

20 A. Well, certainly from a DJPR perspective we were certainly responsible for the operational elements of, you know, functions that were relating to DJPR. But to the best of my knowledge, our Department did not have any involvement on health-related matters.

25 Q. Okay. And in fact what you told Madam Chair is that no formal written instructions were issued to or discussed with hotels on applicable infection control requirements at the time they entered into a formal agreements with the Department; correct?

A. There were no formal instructions that I received, that's correct.

30 Q. There were no formal written instructions that you provided to hotels either; correct?

A. That's correct.

35 Q. Thank you. Did you raise with anybody within the Department of Jobs, Precincts and Regions, including the Secretary, that you were concerned that you were selecting hotels that would accommodate individuals with COVID or suspected COVID cases yet no instructions were being given to hotels on applicable infection control requirements by the Department?

40 MS CONDON QC: Madam Chair --

CHAIR: I think you have already had the answer to that, Mr Moses. Mr Menon has answered now on several occasions that, on health-related matters, that was not part of his role.

45 MR MOSES SC: Yes, thank you. And I think his answer was, Madam Chair, I think his answer was that he does not know whose role that was within the Department of Jobs, Precincts and Regions.

I have reached that position, I think, Madam Chair, where it's really the documents that I need to take the witness to. So I can stop now. Thank you.

5 CHAIR: Thank you.

I'm not sure, Mr Neal, whether there are any other parties with leave to appear subject to the issues that Mr Moses has raised that they wanted to --- that wanted to put any matters to Mr Menon.

10

MR NEAL QC: There were two parties or two counsel who raised questions about Mr Menon's evidence --- Ms Robertson was one and identified a particular paragraph, which I sought to elicit and I'm not sure whether it's an outstanding issue or not, perhaps we can --

15

CHAIR: All right.

MR NEAL QC: --- hear from her.

20 MS ROBERTSON: Madam Chair, I don't intend to press that further.

CHAIR: Thank you, Ms Robertson.

25 MR NEAL QC: Also, Ms Harris identified three particular paragraphs which I have endeavoured to elicit a bit more information on and I'm not sure to what extent that satisfies her concern.

30 MS HARRIS QC: Your Honour, there may be some further questions. Not all of the matters were resolved by Mr Neal's questioning. But I do note that Mr Moses has foreshadowed that the documents that he wishes to use relate to both the Department of Jobs, Precincts and Regions and officers of the DHHS. I don't know what those documents are but it may be --

35 CHAIR: I think, to be fair, Ms Harris, it's me that has identified that there are matters that touch upon your client's interests in those documents which is why I thought the more judicious course, given that they are not documents in the tender bundle, the more judicious course is to give both you and Ms Condon the opportunity to have a look at those documents and have some time to reflect on what, if anything, you want to say back to me with respect to the use of them. So I certainly have
40 reserved that position for both you and Ms Condon.

MS HARRIS QC: Thank you, Madam Chair. It may be that those matters are so linked in with the matters that I wish to cross-examine on that it would be a bit inappropriate for me to start on that while Mr Moses is still cross-examining.

45

CHAIR: Yes, I understand and accept that.

MS HARRIS QC: Thank you, Madam Chair.

CHAIR: You are probably in the same position, are you, Ms Condon?

5 MS CONDON QC: Yes, Madam Chair. We will have the opportunity to review those documents and then if any submissions are made as to matters of relevance or not, we will forewarn the Board. Thank you.

10 CHAIR: Thank you. That being the case, Mr Neal, we will adopt the course that I think has been suggested by you and certainly seems to me to be a sensible course with respect to those remaining issues and the documents that have been, as we have said, identified.

15 Mr Menon, I do apologise for the way in which your coming before the Board has been disrupted. I'm not sure if you have understood that the way in which we are endeavouring to deal with a couple of these contentious issues is to just give counsel the opportunity to see exactly what's contained in the material and then come back at 2.00 to bring those issues back before me, if necessary, and complete your evidence in that way. So I do apologise for that disruption but it would appear to be
20 unavoidable at this stage. So we will --- I can release you now until you are required back before the Board again at 2.00.

A. I understand, Madam Chair, thank you.

25 CHAIR: Thank you, Mr Menon. So I will stand down now, Mr Neal, until 2.00.

MR NEAL QC: If the Board pleases.

30 **ADJOURNED** [12.11 PM]

RESUMED [2.00 PM]

35 CHAIR: Yes, Mr Neal.

40 MR NEAL QC: Thank you, Madam Chair. In the time that you were stood down, there have been some discussions in order to get to a pragmatic solution to the issue of these documents. The first thing to be said is that because they are not drawn from the tenderable bundle, they are not necessarily in a position where they can be publicly displayed.

45 CHAIR: Yes.

MR NEAL QC: What we have done there is to provide Mr Menon with physical copies of the documents.

CHAIR: Yes.

5 MR NEAL QC: The understanding with my learned friend Mr Moses is that reference can be made to the document but on an as-necessary basis, if you will; that is to say, if Mr Menon is part of a document and other officers are, they can be referred to by their title or whatever. So that's the general approach.

10 More specifically, in the bundle that was previously proposed there was one lengthy document which was transcript, and I understand there is no issue, that the transcript need not be referred to, so we have that much unanimity, I think.

CHAIR: Transcript from these proceedings?

15 MR NEAL QC: Yes. Perhaps not necessarily of the sort the Board is anticipating. In any event, it is not controversial so that does not need to be referred to.

20 The last thing I wanted to say was, and I have had some discussion with Ms Condon, the concern is always obviously that cross-examination of this sort is limited, that it is limited to the interests of party that is doing the cross-examination, that is the Practice Direction, there is no cross-examination as a right or at will. So what I'm proposing is that the documents to which reference actually will be made can be identified to the witness and Mr Moses can indicate to the bench on that occasion what is the specific relevance of the document to which the witness is being taken.

25 CHAIR: Specific relevance always being, Mr Neal, how it is going to advance my understanding?

30 MR NEAL QC: That is the only real relevance, Madam Chair, yes, how it is going to advance your understanding, in a way that could not be done otherwise, either by direct evidence from the clients, from Mr Moses' witnesses or by other available documents or by submission or howsoever otherwise. That is the pragmatic approach that we are proposing to adopt.

35 CHAIR: All right.

MR MOSES SC: Thank you, Madam Chair. I have had discussions with my learned friend and I am ready to proceed on that basis.

40 CHAIR: Mr Moses, I have to say your sound is not as good as it could be. I wonder if that is just because you are not --

MR MOSES SC: [indistinct] that should hopefully work, I hope.

45 CHAIR: Whatever it is that you just did made it a little bit better, I have to say.

MR MOSES SC: Thank you, Madam Chair.

CHAIR: Mr Moses, on that understanding, I take it your representations to me are that this is going to assist me to understand something beyond what the Board already understands about infection control procedures in hotels; is that right?

5

MR MOSES SC: That's correct. And also issues relating to the induction of individuals working at those hotels. It will become relevant, Madam Chair, when I take the witness to the first --- to the second document. There is one document I want to take the witness to at the commencement, which is the brochure that he referred to, issued by the Commonwealth Department of Health and an accompanying email, which I want to take him to and ask him some questions. As I'm going through them, Madam Chair, I will identify them. The first one relates to the brochure which he referred to in his evidence earlier, to get him to identify the email and the brochure, to confirm this is what he was referring to, and then I was going to ask him a question, as you will see from the email, as to whether anybody from the Department of Health's Public Health Unit got back to him with an answer to the questions, because they asked some specific questions, and on our review of the documents there doesn't appear to have been an answer provided.

20 If I can proceed first with that pamphlet, if I can refer to it as that, Madam Chair?

CHAIR: All right. Now, Mr Menon --

25 A. Yes, Madam Chair.

CHAIR: --- I understand that over the break you have been provided with some documents in hard copy?

30 A. Yes, I have just received it in the last five minutes.

CHAIR: All right. So can I just check with you, I too have been provided with a copy of the documents which I have been able to turn into hard copy. Obviously, part of the difficulty we have is if we were in a normal environment, Mr Moses, as you well understand, we would have resolved this in a matter of minutes as opposed to the complexities of everyone dealing with these issues in remote locations with documents that of course weren't in the tender bundle. But that is simply the situation we are in, I don't say that obviously as a criticism of anyone.

40 MR MOSES SC: We accept that, Madam Chair.

CHAIR: Yes. So, Mr Menon, can I check with you, the document that I'm looking at that has on the top of it, "Coronavirus Disease COVID-19" and it has "Australian Government Department of Health", with the Commonwealth crest on it, and at the bottom of the document it refers to it as version 10 --- this is the one that I'm looking at in any event --- version 10, 27 March 2020. Is that the same document that you have been provided with too, Mr Menon?

45

A. Yes, it is, Madam Chair.

CHAIR: All right. Thank you. We now appreciate, Mr Moses, and I'm assuming that goes for you too, we are all looking at the same document.

5

MR MOSES SC: That's correct, Madam Chair.

CHAIR: So it is version 10, 27 March 2020?

10 MR MOSES SC: That's correct.

CHAIR: All right. So you want to ask Mr Menon now to confirm whether or not the document that he was referring to earlier in his evidence, as best he understands it, is this one?

15

MR MOSES SC: Yes. Thank you, Madam Chair.

CHAIR: All right.

20 A. Sorry, was that a question to me?

MR MOSES SC: Yes, Mr Menon.

CHAIR: Well, I think --

25

MR MOSES SC: Sorry ---

A. I beg your pardon. So the answer to that is "No, it's not". This version that you have presented, version 10, is not the version that I have seen or that was sent to me. The version that was sent to me was version 9, dated 18 March 2020.

30

CHAIR: Thank you.

MR MOSES SC: Can I ask that you go to the email that has been drawn to your attention. It's an email chain that starts, as you'll see from the documents, it starts on 1 April 2020, relevantly to you. It is an email addressed to you and it's from an official within the Department of --

35

A. Sorry, is there a reference for this email? Which email are we talking about, please?

40

Q. Yes, just wait one moment.

CHAIR: The person that you are referring to has indeed already been a witness in these proceedings, Mr Moses.

45

MR MOSES SC: So I can refer to the name?

CHAIR: You can refer to her name.

5 MR MOSES SC: There is an email from Claire Febey to you on 1 April 2020 at 9.03 pm and it is document DJP.102.006.9885. Do you see that?

A. Okay. I'm just turning to it right now. Thank you, Mr Moses, I have just seen it.

10 Q. Would you read that to yourself, to familiarise yourself with the document, and then I just want to ask you a question once you're done.

A. Thank you, I have read it.

15 Q. What you will see in the dot point, there's a question that says:

What specific practices should we apply in the hotel space (e.g. cleaning after each arrival through reception, after a confirmed case is moved, after a recreation period).

20 Then it goes on to say:

This is especially important for us to understand given the health and wellbeing issues raised by DHHS staff on the call.

25 Do you see that?

A. I do.

30 Q. Were you present on a telephone call with Ms Febey in which health and wellbeing issues were raised by the Department of Health and Human Services in relation to the Hotel Quarantine Program?

A. Not to my knowledge, no.

35 Q. Thank you. After you received this email, if you go to the page in front of that page, which is 9884, there's an email from you at 9.23 pm to Claire Febey and others. Do you see that?

40 A. Yes, I do.

Q. And you ask a series of questions: first of all:

45 1. *What is the minimum acceptable standard of cleaning required at all quarantined premises.*

2. *Any prescription details around cleaning standards expected in all common areas including corridors, hallways, reception, terraces, etc.*

3. *Should a guest vacate - what level of cleaning is expected for each room (COVID-infected versus non-infected --- or is there a difference in cleaning standards).*

5

Hope this helps.

Do you see that?

10 A. Yes, I do.

Q. Those questions, who were you hoping to get the answers to those questions from in that email?

15 A. I was hoping to get clarity from DHHS.

Q. Thank you. And if you then go to page 9883, this seems to have been then sent through to DHHS asking for guidelines on cleaning requirements or response in relation to the questions that you posed; correct?

20

A. I assume so, yes.

Q. And it says:

25 *Given this is active quarantine accommodation, there is an urgency associated with this information.*

Do you see that?

30 A. I do.

Q. And if you go to page 9882, you will see there's a further exchange before we get to page 9881, there's an email of 2 April 2020 from somebody within the Department of Health and Human Services to Claire Febey at the Department and the State
35 Emergency Management Centre and ccing somebody else from the Department of Jobs, Precincts and Regions, which says:

I have already gone back to Public Health with the same questions earlier this evening noting that we require more specific info.

40

You will see down below, there's a reference to:

Many thanks for sharing this link. It's a good base level of information, but can I press you for something a little more tailored?

45

If you go to the document at page 9882, there's a link. I want you to accept from me for one moment that what has printed off --- what appears to be printed off in that

link is the version 10 document and that seems to be the document that some specific advice is being sought, rather than that document because it's good base level information but they need more tailored information because hotels were seeking very specific advice on cleaning practices when they are running essentially health services because they will be accommodating many or mostly COVID-19 cases.

Do you recall Public Health coming back with information to Ms Febey from your Department that was passed on to you?

A. Look, I do recall this particular link being passed back to me.

Q. Yes.

A. And when we actually looked at it, it seemed to be identical to what we were already aware was with and available to the accommodation providers.

Q. No, quite. But were you aware of Ms Febey's issue that she raised, if I may say so correctly, that what was being sought --- what was being pressed from the Department of Health, it would appear, was something more tailored because hotels were seeking specific advice on cleaning practices because they would be running essentially health services?

Do you recall any further information being provided about what hotels should do as a result of information being sought from the Department by Ms Febey?

A. I do not recall anything further at this point.

Q. Did you --- do you have any recollection of passing on any information to hotels that came from the Victorian Department of Health and Human Services that went specifically to what they should be doing post --

A. Yes, I do --

Q. Let me finish the question --- post April 2020.

A. Look, to the best of my knowledge, I think late April --- and I can't exactly remember, I think it is in my witness statement, I will have to refer to it --- and if I may just refer to that for a moment, I will have to just try and find where it is in the statement. But it was in the second renewal, from memory, of the hotel contracts that we did send just an additional brief sentence or a couple of sentences in relation to the use of, I think, from recollection, hot water or the hottest possible water to wash clothes and linen. I do remember that was information that we had actually received from DHHS.

So what we had forwarded, it wasn't in a leaflet form but it was in progressive knowledge that was passed on to us.

Q. Can you explain why there was no further information provided to hotels prior to late April concerning the issue of cleaning practices that needed to be undertaken, given the fact that these hotels would, in effect, be in the position of running essentially health services?

5

MR NEAL QC: Madam Chair, if I may intervene at that point.

MR MOSES SC: I withdraw the question. I want to put another question. I will withdraw the question, I will put this question.

10

Sir, is that your best recollection then, that the only further information that hotels were provided with was that the very hottest of water should be used to clean linen and clothes?

15 A. Well, that's what I recollect that went out in April.

Q. Thank you.

20 A. So, yes. I don't recollect anything else that was actually forwarded. Now, you know, certainly not from me, I do not recall anything else.

Q. Thank you. I'm now going to go to a different topic, which relates to the question of security.

25 On this document, Madam Chair, I am taking the witness to a document which is DJP.101.002.1076. As you will see, Madam Chair, there is a question being directed to Mr Menon concerning the question of standard security for labour hire firms being sent to him by the Deputy Secretary of the Department, and Mr Menon responding to that, concerning minimum security requirements. I want to ask him about what those
30 minimum security requirements were. And if you then go, Madam Chair, to an email of 27 March, somebody raised an idea, as you'll see, from the Department of Jobs, Precincts and Regions to Mr Menon and others as part of a team to say:

35 *Ideal model in my mind would be a supply of security staff from [I won't name the individuals] who work under the direction of an authorised officer in DHHS. This DHHS team would induct the security guards and provide on-call advice about what to do in certain situations and determine if any incident should be escalated to the authorised officer and/or VicPol.*

40 What I wanted to then ask him a question about --- and you'll see there's again a reference to him in an email --- why that proposal had not been taken up for security staff to work under the direction of an authorised officer of the Department of Health and Human Services and why Health and Human Services did not induct security.

45 CHAIR: I can't see how --

MS CONDON QC: I raise an objection to that, Madam Chair.

MR NEAL QC: Can I say, Madam Chair, this seems to fall into the category of something analogous to pre-contractual discussions, where one knows in the end what the regime was, many ideas might have been floated, some thought to be good,
5 bad or otherwise, but what is relevant, it seems, with respect to the Board, is what was actually decided and done contractually as opposed to models that might have been floated.

MR MOSES SC: Madam Chair, can I say this about this: this was Government
10 Departments talking amongst themselves about what should happen. This proposal put up didn't happen. We need to know why this did not happen. Because there seems to have been confusion, similar to Abbott and Costello as to who was on first and who was on second here, as to who was doing what. We have no idea of knowing why this particular proposal, which could have been an exemplar for how to
15 deal with this issue, was not taken up. And there is a vacuum of evidence before you. So, ultimately, somebody turned their mind to it but then it didn't happen. And the question has to be: why didn't it happen? This is not about contractual issues. Government Departments have an obligation to the public and the people that they engage. That is their first --- that is their first obligation --- nothing about contracts
20 in that. They turned their mind to it and they didn't do it. So we need to know why they didn't do it. They surely couldn't have thought it was up to security companies and hotel operators to deal with the pandemic. So we want to know, you turned your mind to it, why didn't you do it? If he says he doesn't know, does he know who made the decision? Otherwise we're not going to get to the heart of what happened
25 here.

MR NEAL QC: Madam Chair, it is a matter for you. The document to which the witness is being referred specifically says, by the writer, "an ideal model in my mind would be", it seems, a model other than the one that was adopted.
30

CHAIR: Yes.

MR NEAL QC: Given that this witness has, it would seem, tangential relationship to the security contracts and to the bigger picture of who decided what the correct
35 model was, if the question is relevant, it is not relevantly directed to this witness.

CHAIR: I think that is right, Mr Neal. I can't see how Mr Menon can take that father any further. What you say, Mr Moses, is obviously a question for me, it is a relevant issue, but I don't know that this witness is going to be able to take that
40 matter any further. And the --- I've understood Mr Menon consistently to say throughout his evidence that he was involved in the contractual arrangements and that the Department of Health and Human Services were involved in the health-related matters.

45 I understand that to be your position, isn't it, Mr Menon?

A. That's correct, Madam Chair.

CHAIR: And that when it came to issues with respect to infection control, I think it's been put to Mr Menon on a number of occasions whether he received any documents with respect to infection control, whether he had any formal written instructions with respect to infection control, and he's consistently answered "no" and referred the Board to the document that you have elicited that response to him from. So I'm just not sure how it is going assist me any further with respect to this witness why that --

MR MOSES SC: Madam Chair --- I apologise, Madam Chair, I interrupted you.

CHAIR: I'm not suggesting to you for a moment, Mr Moses, that the issues you raise in terms of issues before the Board are not relevant issues to consider. But I don't understand this witness to be able to help any further. Unless I'm wrong about that, Mr Menon, in which case I'm happy for you to correct me.

A. Madam Chair --

MR MOSES SC: Madam Chair, can I just be heard before the witness addresses you, in the search for trying to find out what happened here, he did say he wasn't responsible. But surely I am entitled to ask him the question, if he wasn't responsible for security issues then why were people sending him emails telling him there were a couple of options of standard security labour hire firms and that him responding and thanking the Deputy Secretary for providing this information and asking, "Are there minimum security requirements applicable to all hotels?", and then we then get to further information about the model. If he says, "Well, yes, I did receive that but that was a mistake, I actually had nothing to do with it," because he can't tell us who was responsible for it in the Department, and then surely he would know whether this proposal, the ideal model, was taken up. If it wasn't then aren't we entitled to ask him, "Do you know why it wasn't taken?" He might be able to shed light on this that others may not and therefore we have lost the chance to get that mosaic --- that tile for the mosaic of evidence in this matter. We just don't know because he has left the witness box by that time and we haven't asked him critical questions.

CHAIR: Mr Menon, you have heard that exchange. What are you able to say in response to it?

A. Madam Chair, what I can share, quite comfortably anyway from what I recollect, the reason I have been linked into this trail --- email trails related to security was on 27 March or 28th, I can't quite remember which day now exactly, we did, as part of contracting the suite of accommodation required for mandatory quarantine, the additional questions we had posed to those hotels that we were looking to contract was, what capacity and capability did they have in the provision of security, in the provision of cleaning, in the provision of catering? And, Madam Chair, as part of my witness statement and accompanying documents there is an email which actually clearly outlines a tabular response that we collated as a team from each of those hotels, outlining a binary response: "yes" or "no". Yes, they have security, no, they don't have security; yes, they can provide catering, no, they can't provide catering;

yes, they can provide whatever, and no, they can't provide. So it was a "yes" or "no" response, it was a snap audit, you know, a preliminary audit, if you want to call it that, Madam Chair, of those hotels and what capacity or capability they had. I then relayed that information to the respective individuals that are in this latest set of
5 email trails. They were part of that story of relaying information. So there is some emails here that say, "Look, Unni, let me introduce you to another person in DJPR who will now run with, you know, more details related to security."

The start and finish of my involvement was just about that. That's it, in as far as
10 security was concerned. There was no --- nothing else involved. If the question is, do I know who was ultimately responsible for contracting or hatching a plan for the security processes that were in place, I really don't know. And it wasn't in my remit and it would be inappropriate, Madam Chair, for me to speculate.

15 CHAIR: Definitely.

MR MOSES SC: I'm prepared to move on, based on that answer, and we will deal with that in the context of other witnesses who may be called and to put to them what that witness has just said.

20 Can I put this proposition to you, Mr Menon, without reference to a document first. Do you accept that by the beginning of April you had formed the view that the Department of Health and Human Services did not know what they really needed or wanted and this was causing you concern? Do you accept that?

25 A. To the extent of an understanding of what specific requirements were needed, there were ideas, there were thoughts, but I guess we were hopeful for more clarity.

30 Q. Okay. And you in fact --- if we go to document DJP.101.007.0874, and Madam Chair, this relates to the question I just asked, this issue. You will see in the second-last paragraph, Mr Menon, you tell the head of the Department, the Secretary of the Department, in Claire Febey:

35 *Importantly I don't have confidence that DHHS know what they really need or want --- the demand profiling conversations and needs discussion yesterday gave me pause for concern.*

Do you see that?

40 A. I do indeed.

Q. And do you know whether the Secretary of the Department --- can you recall whether the Secretary of the Department got back to you in respect of your email?

45 A. I don't recall, no. But can I just put some colour to that. And remind ---

MR MOSES SC: [indistinct].

CHAIR: Just a moment, Mr Moses. Let me hear the answer, please.

MR MOSES SC: I didn't hear the answer. That was the question. I'm sorry.

5

CHAIR: You spoke over the top.

10 A. I do not recollect the Secretary responding to this email but as I had raised earlier this morning, one of the challenges that we constantly faced in this task was to get an accurate handle on demand profiling. I had mentioned that, Mr Moses, earlier today, that that was a big issue because a lot of things hung off that, in terms of how we managed inventory, how we actually managed supply to best match demand. So it was an optimisation issue, we needed to get further clarity on it, this is just simply reflecting what I had raised earlier today.

15

MR MOSES SC: Did information come back to you, sir, from the Department of Health and Human Services that informed you what they required? After you sent this email to the head of the Department, did you receive any subsequent communication from the Department of Health and Human Services?

20

A. I do not recall. I don't recall.

25 Q. Do you know whether the Department Secretary briefed the Minister that there was a concern in relation to the Department of Health and Human Services not knowing what they needed or wanted?

30 A. This comment was made in relation to demand profiling, right, so it's in relation to demand forecasting. So --- we needed more clarity on the demand forecasting side and so that was the issue, so this is not a catch-all statement, this is an issue in relation to demand forecasting.

Q. And that is --- going back then to that issue, you can't recall receiving that information from the Department; correct?

35 A. I do not recall a specific response to that, no.

Q. Okay. Thank you.

40 Can I then ask, if I can, another question in relation to the document that is to be found at DJP.102.002.0617. This is an email that you are copied into from Ms Febey and the Secretary of the Department.

45 I just want to ask the witness a question in relation to this issue, Madam Chair, which is that an issue is being raised on 31 March 2020 by an operator of a hotel about taking confirmed cases into quarantine accommodation and whether there needed to be the exploration of other solutions because there was a concern being raised that this was creating a high risk environment and staff were concerned about this issue

as to what happened. With that information, does he know how that was progressed?

CHAIR: I'm sorry, you have lost me, Mr Moses, as to where you are going with the point. This is a Hotel Quarantine Program that's being set up, we are talking
5 48 hours after a decision has been made to go ahead with it. A certain amount of reality needs to be put into the context. And I'm not sure where the question or indeed an answer goes, to advancing my understanding.

MR MOSES SC: Madam Chair, I think we all accept that this had to be done
10 quickly and urgently because of the 14-day quarantine directive that came in for international travellers. But at the same time what we are entitled to know is whether any of the matters that were raised in particular on this issue, where there was a concern being raised in respect of this question of confirmed cases going in to a particular hotel in terms of what I'll call a red hotel, as to what was done with that
15 information by the Department, whether it raised that concern with anybody else within Government about whether hotels were actually appropriate to be housing confirmed cases of COVID. Because bearing in mind this precedes, Madam Chair, the genie coming out of the bottle in terms of the Rydges Hotel. So what we are trying to understand is, what happened in respect of this being a good idea to put
20 COVID-19 people into hotels rather than putting them into infectious disease units.

CHAIR: Mr Moses, what I can say about that issue is: isn't that why we're having an Inquiry?

25 MR MOSES SC: Well, quite, but then we need to know what happened with this information, because it couldn't have just been disappeared into thin air; something had to be done about it. When Government officials receive information, they reflect on it and do something about it. That is what their remit is. That's why I'm asking the question. But if you don't wish me to ask the question, I'll move on.

30 MR NEAL QC: Madam Chair --

CHAIR: Let me hear from Mr Neal. Yes.

35 MR NEAL QC: Madam Chair, on the face of it, the documents from Mr Phemister to Ms Febey, copied to Mr Menon, as I understand the document, it raises the concern of hotels that they might be required on an ad hoc basis to take in people who are --- well, the reference is to a local person who is a confirmed case who doesn't have further accommodation and needs it, and as I understand it, the hotels
40 are saying, "Well, we've signed up for something in particular here and now on an ad hoc basis it seems to be extended, we're concerned about that, what are the parameters around this?" That is the tenor of the document. And it might be relevant to Mr Menon in the sense of saying, well, should the contracts with the hotels now accommodate other people as well apart from quarantine? But, really, in
45 terms of its centrality of relevance to you, it escapes me, with respect.

MR MOSES SC: We raised the second dot point, the last point on the page. It says:

Staff and the hotel were concerned it was the 'thin end of the wedge' which I understood to mean they were concerned of opening up the model to take a broader set of complex and confirmed cases.

5

And that is what I want to ask the witness about, about whether there was any discussion with the Department of Health and Human Services to explore other solutions, because what is said there is:

10

DHHS agreed to explore other solutions and I committed to raising this as a need for consideration as part of [Mr Menon's] work.

15

So what I wanted to know was: did he actually give this consideration as part of his work and, if so, what did he do about it? Because this is a public official having an issue with --

CHAIR: I don't need the speech, Mr Moses.

20

Go on, Mr Menon, I'll allow you to answer that question.

25

A. Thank you, Madam Chair. The extent of my involvement is contracting accommodation supply. So if I receive instructions and suggestions from the said persons in this email, we would then accordingly execute the outcome. In relation to my thoughts in the bottom half of the email, it is simply a reflection of what the current contractual arrangements actually allow or permit. And so, you know, it was really expressing a view as to, you know, how we --- what the contract is currently saying, and little more. I was not privy to other conversations. At a later stage, we were told to help in securing a COVID-positive hotel and we subsequently went about doing that.

30

CHAIR: And who were you told by, Mr Menon, was that the Secretary?

35

A. No. It will come generally from Ms Febey, who was at that time our representative, the DJPR representative, that spoke to the State Control Centre.

CHAIR: Okay.

40

MR MOSES SC: And just following up from an answer that you gave just a short while ago, was that hotel that was set up the Rydges?

A. That's correct.

45

Q. In relation to the Rydges, you are not able to tell us, are you, what measures were put in place at that hotel specifically to deal with persons with confirmed infectious diseases; correct?

A. I could not give you the specifications around anything medical in relation to

setting up those, as you have put it.

Q. Yes. Thank you.

5 MR MOSES SC: I have no further questions of the witness. Thank you, Madam Chair, for your patience.

Thank you, Mr Menon.

10 A. Thank you.

CHAIR: Thanks, Mr Moses.

15 Now, Ms Harris, I think you indicated you had some matters to put to Mr Menon.

MS HARRIS QC: I do, Madam Chair. I hope to be relatively brief. They relate to some of the contract management issues and the cleaning issues that have been raised and have been also pursued by Mr Moses in his questions.

20 CHAIR: Yes. I'll grant you that leave, Ms Harris.

MS HARRIS QC: Thank you, Madam Chair.

25 **CROSS-EXAMINATION BY MS HARRIS QC**

MS HARRIS QC: Mr Menon, you have explained in your statement that before the Hotel Quarantine Program came into effect or was announced with a short lead time,
30 you and your team had already been engaging comprehensively with the hotel and accommodation sector in respect of potential needs for accommodation for vulnerable people?

35 A. That is correct, with our DHHS colleagues as well, yes.

Q. So this was the period from 22 March and you and your team were in contact with hotels seeking their interest in being available to give that accommodation to vulnerable people who would need to self-isolate; is that right?

40 A. That is correct.

Q. And was it your understanding in that period that some of these hotels were in operation and still receiving guests?

45 A. That was not clear at the time we were initially making enquiries. So it was really an expressions of interest process that we initiated with the help and assistance of the hotel peak body associations, and I think I mentioned Victorian Tourism Industry

Council, who through their channels had reached out to their membership. So it was really purely to say, "Here is the task that we hope to execute in the not too distant future; are you as a hotel operator interested in making available your property"?

5 "Here are the rates", the sort of things, "Are you offering some of your property, all of your property?" So it was a case of just asking those high-level questions to get a first pass, an indication of --- what we ended up with by 27 March we had close on 500 hotels and around 30,000 rooms potentially. You know, there was a substantial keenness that we could ascertain.

10 Q. Some of those hotels may have still been taking guests at the time, you are not sure whether they were completely closed or --

A. I'm not sure.

15 Q. When you were discussing with them in that initial period about this need for accommodation for people in vulnerable position, it was, I think, as you have described it in paragraph 13 of your statement, they needed accommodation for self-isolation by reason of having tested positive for COVID-19 or having been exposed to COVID-19.

20 So that was a particular reason for the need for that program of getting hotels to give their interest?

A. That's correct. And those were the reasons, as I understood, after discussions with my DHHS colleagues, as to the reason or rationale as to why we were looking to secure accommodation.

Q. Yes. So the hotels would have been quite aware in this period from 22 March onwards, when your team was actively engaging with them, that the potential cohort of people who would need accommodation may either be testing positive to COVID-19 or need to isolate because of a possible exposure to COVID-19?

A. That is correct. So it was really --- the message we were giving was it's as much a preventative initiative as it was a reactive one.

35 Q. And so the hotels would obviously have been aware of the need to have some special procedures in place or procedures that were beyond the normal, our life before COVID normal, to respond to the risk that some people who would be coming into their accommodation might either be COVID-positive or possibly would, after an incubation period, test positive; that's correct, isn't it?

A. That is correct. To my knowledge, certainly that would be correct, yes.

Q. And, of course, that would explain why, as you said in your statement, the contract allocated clear responsibility to the hotels, first, the cleaning of rooms consistent with the most recent recommended public health standards in respect of COVID-19. That was the reason for it because it was a possibility that would

actually arise, that they would have guests that test positive for COVID-19?

A. That's correct.

5 Q. And there was also some obligations in the contract with respect to training and ensuring that there would be PPE available with respect to the standard required for COVID-19, for that same reason?

10 A. That's correct. Yes. The onus was very much on the supplier to ensure that if they wanted to put their hand up and be part of this program, they had certain obligations to fulfil and we had endeavoured in the contract to make that clear.

15 Q. You mentioned in your evidence that you already knew from your communication with the Accommodation Association of Australia that hotels had received some information relevant to hotels' operations and COVID-19 from the Commonwealth Health Department?

20 A. Yes, I was aware. So, I received an email with that Commonwealth Department of Health leaflet, three or four pages' worth, attached as a soft copy attachment. And I think, as I mentioned to Mr Moses, that was the version 9 of that particular leaflet. And, in fact, it quoted the --- the Accommodation Association of Australia Executive Officer actually quoted --- lifted from the pamphlet what it mentioned about the prescription around cleaning and the accompanying protective equipment. And I subsequently referred to that paragraph and read the whole leaflet, which also
25 pointed to a 24/7 hotline number for any assistance hotel operators may require in relation to COVID-19, as well as pointing to a link for the Health Department's website.

30 Q. So hotel operators would have been aware that not only could they read that pamphlet, but there was a specific tailored hotline they could call if they wanted more information?

35 A. I'm not sure if that was a tailored, fit-for-purpose hotline just for the accommodation sector but I did note that there was a 24/7 hotline that was in there.

Q. I think in your evidence today you referred to the fact that you would have expected the Victorian Department of Health and Human Services might also have some information publicly available?

40 A. Yes, that's right. I mean, I had not put my hands on it anywhere, I had not seen it, but certainly that was the thinking, that was part of the thinking in the 48 hours that we had to stand up, you know, whatever it was, 23 or 24 hotels.

45 Q. Madam Chair, I have put Counsel Assisting on notice of some documents that I wish to refer to that I understand should already be in the online hearing book. I can read out the document number for the operator, if that is convenient.

CHAIR: When you say the hearing book, do you mean the tender bundle, Ms Harris?

5 MS HARRIS QC: It may be, Madam Chair, I'm sorry, I'm not confident I know exactly where it is but I have checked that it is available to be exhibited or displayed on the screen, if necessary.

10 CHAIR: What is the name of the document? Is it a document that is likely to contain personal identifying information?

MS HARRIS QC: No, Madam Chair. It's some cleaning information that was made available on a Department of Health and Human Services website.

15 CHAIR: I see.

MS HARRIS QC: The document number is DHS.001.0015.0323.

A. I'm not sure I have a copy of that.

20 Q. I'm sorry, Mr Menon, I don't know that you necessarily would have. Your solicitors might have been on notice of it but you may not have it. I don't think it would be a problem because I understand you can't possibly be across every document that is relevant.

25 CHAIR: What Ms Harris is asking, Mr Menon, is that if the operators that have access to the electronic copies of documents that have been produced to the Inquiry could actually find it. So that is what the delay is that is going on at the moment.

30 A. I beg your pardon, I wasn't aware.

CHAIR: No, that's all right. Of course you weren't.

35 I know it's a difficulty, Ms Harris, finding documents that aren't in the tender bundle. You might want to revert to --- finding the documents for the purpose of putting them up on the screen that aren't in the tender bundle is not an easy and quick process, necessarily, for the operator. So you might wish to just take Mr Menon through what you are looking at in front of you and bear in mind Mr Menon is not looking at it. So you will need to be perhaps descriptive.

40 MS HARRIS QC: Yes, Madam Chair. If I can say at this point, in case it persists, to the operator in future, I did email three documents through to Counsel Assisting last night. They are documents that in fact were referred to but not shown on screen last week. If I can --- I would like to take Mr Menon to those documents in the course of his evidence, it might help us be ready.

45 If I can first say, Mr Menon, you may not be aware but on 22 March, a document dated 20 March 2020, titled "Cleaning and disinfecting to reduce COVID-19

transmission - Tips for non-healthcare settings" was made available on the Department of Health and Human Services website. Now, you can't see that document. But the document describes itself as aiming to:

5 provide advice on cleaning and disinfecting to reduce the risk of COVID-19 transmission in all non-healthcare settings in Victoria. The principles in this guide apply equally to domestic settings, office buildings, small retail businesses, social venues and all other non-healthcare settings.

10 It later makes clear in the document that it contemplates situations where a suspected or confirmed case, being a person who is positive for COVID-19, remains in a facility that houses people overnight, for example, a boarding house or hotel.

15 Now, that document --- and hopefully we can show you and the Board what I'm referring to --- yes, here it is. Thank you.

CHAIR: Is that the one you are after?

20 MS HARRIS QC: That is. Thank you, Operator, I'm very grateful.

The third paragraph down, Mr Menon, is the passage I just quoted from:

25 *This guide aims to provide advice on cleaning and disinfecting to reduce the risk of COVID-19 transmission in all non-healthcare settings in Victoria.*

As you see, it includes some very specific information about cleaning and disinfecting. First, if you can go down to the heading "Cleaning and disinfection", it describes what cleaning means and then what disinfection means. Can you see that?

30 A. I can.

Q. There is some information about cleaning hands regularly. If I can ask the operator to scroll to the next page, there is a section on cleaning and disinfection with some subheadings:

35 *Routine cleaning and disinfection.*
What to clean and disinfect and when.

40 I referred, before the document came up, to a mention of hotels. That is in the second paragraph here, referring to cases in a facility that houses people overnight, and it suggests what the focus there should be in that case on cleaning and disinfection of common areas. It then goes on to say how to clean and disinfect and provides some detail about the process, including cleaning and disinfection of items that cannot withstand bleach, such as soft furnishings, which one would, of course,
45 find in a hotel room. If we can scroll to the next page, there is some guidance on use of personal protective equipment when cleaning, the choice, preparation and use of disinfectants and then, importantly, some information about what kind of

disinfectants can be used. It says in the first dot point:

.... common household disinfectants or alcohol solutions with at least 70% alcohol

5

Then it refers to how to make recipes for household bleach and it refers to recipes to achieve a 1,000 ppm or 0.1% bleach solution.

10 The relevance of that is in part for the Board that Professor Grayson gave some evidence about that being the standard of disinfectant he uses in Alfred Health settings.

15 Now, is this --- so, Mr Menon, I know that it is not necessarily something you would have seen but knowing that this was on the Department of Health and Human Services' website on 22 March, is this the sort of information that you expected hotels might access for the information they needed to discharge their contractual responsibilities?

20 A. I would assume so. But can I just say, I think this was, if I'm not mistaken, produced on 20 March. Am I correct?

Q. Yes, it's a document dated 20 March.

25 A. The date --

CHAIR: It is the date on the front of the document. But I understand Ms Harris is saying to you, Mr Menon, it went online, is that right, Ms Harris, on 22 March?

30 MS HARRIS QC: That's the case, your Honour, that's my instructions.

35 A. So, yes, I --- let me be very clear from my side. I was not aware of this document. This is probably the sort of information --- again, I'm no expert, I'm not a medical expert or a health expert --- to warrant that this is in fact the information that hotels should be relying upon. So I got involved with hotel quarantine as a task as of the afternoon of the 22nd, so that was my first engagement in that space, and so the first I became aware of literature such as this was when Hotel Associations prompted me as to what was available at that time. So I can't speak definitively one way or another whether they would have seen it or had referred to it.

40 CHAIR: Mr Menon, are you saying you don't recall seeing this document?

A. I don't recall seeing it, no.

45 MS HARRIS QC: Thank you. We can remove the document.

Mr Menon, I didn't want to suggest that it is the sort of document that you were required to be alert to, but because you have given evidence that the contractual

terms with the hotels really puts some responsibility on the hotels to do that, and of course one would expect hotels in the discharge of their occupational health and safety obligations that pre-existed the pandemic to be alert to this sort of thing, wouldn't you?

5

A. Well, I would assume so. Again, I'm reluctant to comment because I'm --- I really don't have the expertise on health and medical issues to comment appropriately.

Q. Of course, I understand.

10

MR NEAL QC: Madam Chair, if I may, it's a matter for you always, but whether this proposition is properly advanced through this witness, as opposed to any other member of the public who could read the document is a question for you. But given that he has no particular association with the document, he has no particular expertise, I think, with respect, what Ms Harris is doing is advancing a proposition of logic that this seems to be an applicable document and might people have referred to it? Well, that could be --- you could form that view without having to ask Mr Menon a question about that.

15

20

CHAIR: Importantly, Mr Menon has indicated he doesn't recall seeing the document, so he can only make assumptions about who else saw it and it doesn't particularly --- the point doesn't particularly go anywhere, ultimately, other than Ms Harris telling me at this stage that the document went online on 22 March.

25

MR NEAL QC: Which is not contentious in itself. Its utility by this witness is a question for the bench, with respect.

CHAIR: Yes. Mr Woods has appeared on the screen. I'm not sure for what purpose. But I'm sure you will tell me.

30

MR WOODS: I will, Madam Chair. The situation is this: there were five gentlemen in the witness box last week who were the hotel managers, that one would have thought if the Department is pursuing a case that this was known to each of them, it was described to each of them that this is what they should be following and therefore they did or did not follow, it was those individuals that it should have been put to. It is really being put by way of a submission to this witness which, in my submission, doesn't really go anywhere and it was properly put to those people on Friday. That's all I wanted to say.

35

40

CHAIR: Yes, thanks, Mr Woods.

MS HARRIS QC: Madam Chair, lest there be any misunderstanding, I'm not suggesting that this was particularly --- my point today arose from Mr Menon's statement that, like the Commonwealth Department of Health, the Department of Health and Human Services may well have had information available publicly which would have informed the public health standards that are referenced in the contract. It wasn't --- I wasn't suggesting that it was made known or delivered to any specific

45

individual.

I did want to ask Mr Menon about some evidence that has already been given by some of --- at least one of the hotel operators, Mr D'Cruz from Crown, about the very
5 detailed COVID cleaning protocols that they had in place by 31 March, which demonstrates that they had been able to access very detailed information from unknown sources, but they had put them in their own policies. I won't take that further with this witness if that's not fruitful but I did want to ask whether he was aware of some of the protocols that some of the hotels had introduced.

10 A. I was not aware of specific protocols the hotels had introduced.

Q. Thank you, Mr Menon.

15 With respect to whether or not you should have been providing these documents --- for example, with the contract there seems to have been some suggestion in some of the questioning to you that you should have provided the advice with the contract at the time, although the contract is in fact referring to the public health standards relating to COVID-19 as time went on, the most recent recommended COVID-19
20 health standards. Was that one of the reasons that you wouldn't go into putting specific documents in a contract, because it may evolve?

A. Yes, it was. I mean, it's, you know, by offering the supplier the opportunity to avail the most current health guidelines and standards at any given moment in time,
25 we felt was, you know, a reasonable and fair way for them to keep abreast as to what was the most acceptable standards of health management at that time related to COVID-19. So if we were to be overly prescriptive at the front end of the beginning of a contractual journey, we may run the risk --- I'm not saying that we will --- but we may have run the risk of actually having dated information contractually in a
30 document which we did not think was wise.

Q. Is another reason that sometimes it's appropriate in contracting to refer to matters but not --- but expect that the supplier would be sufficiently familiar with those publicly available standards, for example, to inform themselves about them?

35 A. Well, I suppose, you know, in limited time, in a very complex environment, we had to move with the best available information we had at the time and the thinking at that time of standing up the initial tranche was what you have seen and what you have witnessed. I really couldn't comment any more, you know, over and above that.

40 Q. I'm also thinking of things like you've referred in the contract to the obligations --- the supplier's obligations with respect to the health privacy principles but you don't then set out or provide a separate document with the health privacy principles, it's up to the supplier to go and find out what those health privacy principles are and what --
45 -

A. Yes ---

Q. --- (overspeaking) --- from time to time?

A. Yes, indeed, it's the same logic.

5

Q. Now, just one other topic I want to very briefly explore, Mr Menon, the formal agreements with the hotel suppliers that you have referred to were made between the State of Victoria acting through the Department of Jobs, Precincts and Regions and the individual hotels. That's the case, isn't it?

10

A. That's it, correct.

Q. And in the contracts, the terms of some of the contracts --- or the standard terms of the contracts involved an obligation in clause 2.1(j) to cooperate with and regularly liaise with the Department in various ways. Do you recall that?

15

A. I do.

Q. Of course, the reference to "the Department" is the Department of Jobs, Precincts and Regions as the contracting Department?

20

A. That's correct.

Q. And the hotels had an obligation to notify the Department of any issues in relation to the provision of rooms or services or anything that may create a risk that the accommodation service would cease to be provided, for example?

25

A. That's correct.

Q. You acknowledged in your statement, in your evidence, that your team was responsible for managing the contracts with the hotels, which --- that's an uncontroversial proposition, given that you were the Department that was contracting and had the liaison obligation --- you would accept that?

30

A. Yes, I would.

35

Q. One of the aspects of the contract management is not just the economics of it and the pricing but there are obligations with respect to the performance of the contract as well, managing performance. Would you accept that?

40

A. We had a role in monitoring performance and it was a shared role between my team and the teams on the ground, who actually worked day in and day out with the hotels concerned on a whole raft of issues, be it operational, you know, health-related or otherwise.

45

Q. And one of the most important people in the DJPR teams on the ground was the site manager, the DJPR site manager. Is that the case?

A. I am of the understanding, yes, that's the case. But I do not have intimate understanding of their respective roles and responsibilities beyond knowing that there was a site manager there.

5

Q. The Board, as I understand it, will accept the tender of a statement from a site manager, from the Department of Jobs, Precincts and Regions, who worked at the Stamford Plaza Hotel. And that DJPR site manager says in his evidence that the principal responsibilities in his role as a site manager included:

10

.... managing the arrival and departures of returned travellers from the hotel; acting as the liaison point to contact between the hotels and DJPR; addressing issues raised with that person by the hotels concerning the provision of the services by the hotel, concerning, eg, the provision of meals and rooms; escalating serious or significant issues that arose at the hotels to more senior staff; and answering general queries from hotel or ground staff.

15

Would you accept that that, coming from the site manager who was on the ground at the Stamford Hotel, is likely to be an accurate description of his role?

20

A. I can't actually comment on the accuracy of his role. I was not --- he was not accountable to me, he was accountable to other parts of DJPR. So I can't comment on that. But what I can comment on as a general observation is that those duties as specified by the on-site manager were fairly reflective of what I observed as well.

25

Q. With respect to the receipt of complaints relating to hotels, security companies or other contractors, that site manager says in his statement that on some occasions complaints would be made directly to the hotel, security companies or other contractors, but that his preference was for complaints to be directed to him, because it was his experience that he could most efficiently address and resolve the complaints by reason of the fact that he was on site.

30

Does that seem consistent with your understanding of the roles of the on-ground teams

35

A. I could not comment. I did not have that level of familiarity with roles and responsibilities on the ground.

Q. Mr Menon, when you say in your evidence that there was a distinction between managing the contracts with the hotels and the daily operational oversight and associated management responsibilities of the hotels, which was the responsibility of the DHHS and DJPR representatives on the ground at each of the hotels, you can't really talk to that with particular experience of what was happening on the ground; is that the case?

40

A. Yes, it was lived experience from me. So, you know, my observations and my experience was that problems were best dealt with on the ground, face to face,

45

between the hotel managers and operators and the respective teams on the ground, both from DHHS and DJPR.

5 Q. With respect to complaints about hotels and other services that the contracts resided with DJPR, such as security and food, for example, the evidence of the site manager was the preference that those be raised with him as the DJPR site manager. I suggest that's consistent with the position generally. Is there anything that you would know that would contradict that evidence that that site manager gives?

10 A. I actually don't know the context of why that has been raised as a concern or an issue by the site manager. As I say, I wasn't involved in managing site managers so I could not test, you know, sort of testify to its accuracy or otherwise. But --

15 Q. Sorry, Mr Menon, I may not have been clear. This site manager is not suggesting there was a problem but that this was just the practice of what his role involved of addressing complaints that were raised about hotels, security companies and contractors.

20 CHAIR: Ms Harris, I think the question has been put and answered.

MS CONDON QC: Sorry, I object ---

MS HARRIS QC: Certainly, I will move on.

25 CHAIR: Was that your concern, Ms Condon?

MS CONDON QC: Yes, it was, Madam Chair, thank you.

30 MR NEAL QC: Perhaps, Madam Chair, Ms May, who is yet to give evidence, could probably speak directly to these sorts of issues.

CHAIR: Yes.

35 MS HARRIS QC: I simply raise it because of the express statement in paragraph 47 of Mr Menon's statement about his understanding. But we have clarified now the way in which his understanding was developed.

40 So there's really one final matter, Madam Chair, if the Board pleases, if I could address, and that relates to cleaning information.

CHAIR: That you haven't already gone to, Ms Harris?

45 MS HARRIS QC: Yes, Madam Chair. It does draw on that document that I raised before. But there was a suggestion in the evidence that --- and certainly in Mr Menon's statement --- that the DJPR only received clarity and detail with regards to required cleaning and disinfection procedures from DHHS in mid-June. That is a matter I have notified to Counsel Assisting about that, that I want to ask Mr Menon

about.

CHAIR: All right, yes, I'll let you put that issue.

5 MS HARRIS QC: Thank you.

Mr Menon, I'm not suggesting that the information I'm about to refer to was provided to you, but are you aware that evidence was given by Ms Febey that she recalled an email being sent to her by a DHHS representative on 8 April that contained two
10 cleaning protocol documents?

A. I do not recall, I'm sorry.

15 Q. And --

CHAIR: Ms Harris, I was just going to say, if you are not suggesting to Mr Menon that he knows anything about it then I'm not clear as to why you are putting these matters to him.

20 MS HARRIS QC: I want to make it clear that he just perhaps wasn't aware of something else that was happening, when he has made a very general statement in paragraph 59. The statement is, "We" --- and I take that to mean either Mr Menon's team or the Department of Jobs, Precincts and Regions --- "only received clarity and detail with regards to required cleaning and disinfection procedures from DHHS in
25 mid-June."

A. I would take that to mean my team.

30 Q. Okay. Well, if it's the case that it's not suggested that another person, being Ms Febey, we have put this matter to her --- if it is accepted that that doesn't contradict the evidence that there were two detailed cleaning protocols provided to her by email, and I'm happy to identify them for the Board now, one was the one that I raised before --

35 CHAIR: It's a question, Ms Harris --- it's about this witness' capacity to answer the question. He's not aware of it. You can obviously deal with it in due course when your clients are giving evidence.

40 MS HARRIS QC: Thank you. I'll just --- to close that off, I'll just ask what Mr Menon meant by that paragraph 59 reference. I think he's probably already said.

Mr Menon, when you said, "We only received clarity and detail with regards to required cleaning and disinfection procedures from DHHS in mid-June," was that just your team and, if so, did Ms Febey form part of your team?
45

A. It was just my team, which is the hotel supplier procurement team and Ms Febey was not part of that team.

Q. Thank you.

MS HARRIS QC: Thank you, Madam Chair, those are my questions.

CHAIR: Thank you.

Ms Condon, was there anything arising out of any of that that you wish to ask of Mr Menon?

MS CONDON QC: Madam Chair, there is just one matter of clarification arising from the questions asked by Ms Harris, if I may?

CHAIR: Yes, I'll let you proceed.

MS CONDON QC: Thank you, Madam Chair.

CROSS-EXAMINATION BY MS CONDON QC

MS CONDON QC: Mr Menon, you were asked some questions by Ms Harris on behalf of the DHHS about your understanding of the role of the DJPR site leader. Do you recall those questions?

A. Yes, I do.

Q. She asked you whether or not --- what your understanding of the roles and responsibilities were of the DJPR site leader or team leader at the hotel site. Do you recall those questions?

A. I do.

Q. Did you ever attend any of the hotel sites in person to make any of your own observations about the role that they performed?

A. No, I did not.

MS CONDON QC: Thank you, Madam Chair.

Thank you, Mr Menon.

A. Thank you.

CHAIR: Mr Neal, any other requests that I should know about?

MR NEAL QC: The only one that I was conscious of was the one I think

I previously mentioned from Ms Robertson.

CHAIR: Ms Robertson had already indicated she was satisfied that her issue was dealt with.

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MR NEAL QC: Thank you. Otherwise, no.

CHAIR: All right. Thank you, Mr Menon. Thank you for your evidence to the Board. I will now excuse you.

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A. Thank you very much, Madam Chair.

THE WITNESS WITHDREW

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CHAIR: Mr Neal, as I understand it, there is one remaining matter for today that goes to the issue of Mr Xerri.

20 MR NEAL QC: That is correct, Madam Chair.

I had previously announced on Friday the intent to call Mr Menon and Mr Xerri. Obviously Mr Menon has been called. In respect of Mr Xerri, we have --- the Board has an extremely detailed witness statement from him which annexes a volume of documents. After initially forming a view about calling Mr Xerri and having reviewed his statement and the volume of documents, the view was formed --- two things really --- that it was a particularly responsive document and that it was comprehensive in its detail and that the documents annexed considerably added to the state of the knowledge of the Board in respect of the matters he deals with.

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That caused something of a rethink as to the need to call him as a witness and in view of that we took a particular course which I'll go to in a moment. It is not just a question of what he was saying in his witness statement, Madam Chair, but a number of matters which caused us to form the view that it may not be necessary to have him called.

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The considerations that informed our thinking were that Mr Menon was --- I beg your pardon --- Mr Xerri was an example of a number of witnesses, Departmental witnesses in particular, from whom you have heard evidence, who are tasked with performing certain roles, which they obviously did, but who were not ultimately decision makers in respect of the roles with which they were tasked. And the point of relevance there is that those who were ultimate decision makers, the superiors of people like Mr Xerri, are yet to be called to give evidence and perhaps some of the cross-examination today reflects the view that we were taking, that questions of those who are tasked with doing things, the doers, not the deciders, if you will, Madam Chair, are more properly put to those deciders, where people are saying, "I in my position was given a delegation or an obligation by my superior and I carried it out,"

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oftentimes the questions which arises is, "Well, was that a good decision to go down a certain path?," as opposed to "Was the task performed by you to the best of your ability?" There is a relevant distinction there.

- 5 As I said, those decision makers will be asked exactly those questions, in the case of DJPR amongst others, the Secretary to the Department, whom you have heard some reference to today, Mr Phemister, is to be called as a witness.

- 10 The other informing issues at this point in the Inquiry are the degree to which the Inquiry has now a lot of information which it didn't originally have when some of these questions were being asked, that is to say, it has been informed by the witness statements but also by the vast volume of documents that have been reviewed and understood to this point in time.

- 15 The other consideration that weighed in the balance, Madam Chair, was, as you're well aware, this Inquiry has a compressed timescale and it is necessary to make judicious use of hearing time. Weighing those considerations in the balance, the decision was taken to consider not calling him, that is Mr Xerri, and pursuant to that idea a request was made by relevant counsel to consider whether they sought to
20 cross-examine Mr Xerri as a witness. There was one reply in accordance with the Practice Direction, that is in the time provided in the Practice Direction. That raised a number of issues. The issues were perhaps more generic than you would anticipate in terms of giving leave to cross-examine. That is not to say that they are necessarily inappropriate but they would need to be more specific and pointed for us to form a
25 view about that.

- So the preliminary view we took was it was appropriate not to call Mr Xerri, but to tender his statement. And if it proves to be the case that the issues that were raised in a timely fashion, that was by again Ms Robertson, proved to be matters which
30 couldn't be managed otherwise --- I'm sorry, let me go back a step. There are two considerations we have to take into account: whether the matters which were raised were in fact matters which would assist the Board; and again, the Board has had some practical exposure to the problems of matters that could be put in cross-examination or more appropriately put to other witnesses, taking the Board's
35 time in cross-examination of people such as Mr Xerri: the other question is, of course, the one of natural justice, which is always front of mind.

- The course of action that we propose in respect of counsel who did reply in accordance with the Practice Direction was simply to seek clarification of the more
40 generic points that were raised and in the event that they proved to be matters which ought to be pursued, the course that we are suggesting is that, rather than calling the witness in the circumstances, that the witness might be asked those specific questions, to be put obviously in a witness statement, and that that witness statement be made available, and that was the way in which it was sought to accommodate that
45 concern.

So the course that we propose to take is that the witness statement be tendered and its

many attached exhibits, with one qualification that I need to make, at the moment, in a redacted form, the redaction being caused by claims raised over this weekend in relation to legal professional privilege that might attach to some of the documents that he refers to.

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We can only say for the moment, Madam Chair, that there is a level of plausibility about those claims, in the sense that they identify documents which seem to relate directly to legal advice, in which case it seems that they would probably fall within the purview of documents which ought not perhaps be --- or parts of documents which need not be tendered.

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The course of action we propose to take now is to tender the statement. It is to tender the statement and the attached exhibits. But there is a qualification to that. In Mr Xerri's statement he refers to an exhibit which is Exhibit PX-1, and PX-1, Madam Chair, is a very, very, very long list of documents which we now know to be copies of compliance certificates, that is, apparently, security guards from MSS Security, if my memory serves me correctly, MSS is one of the security companies, which show that a particular guard has undergone the compliance, has satisfactorily completed the online Government program that you have heard referenced in evidence before, the Commonwealth/Federal Department of Health document. The documents are huge in number. They are anonymised, so the only information you will get is that there was a compliance and a date, and no other relevant information. In that event, we are obviously mindful of the fact that we asked for such a document but we don't think it is necessary for the Board to have the advantage of seeing all those documents as part of the tender.

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So the tender would be in respect of the statement of Mr Xerri himself of 24 August and those documents referred to in the tender bundle, that is the folder B bundle to which we refer, but not including annexure PX-1, being the multiple iterations of the compliance certificates.

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MR MOSES SC: Madam Chair --- sorry.

MR NEAL QC: There are in respect of that course of action --- obviously, Mr Moses wanted to have something to say. We did convey --- there was a request that this tender be delayed on the part of Unified Security, which Mr Moses represents. The decision of the Board not to take that course was conveyed yesterday. I don't want to say anything more about that. And there was further a submission received --- if the Board will excuse me a moment --- from Wilson Security, which also sought to take objection to that course of action. That is not a submission that has been publicly ventilated at the moment. If the Board pleases.

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CHAIR: All right. And by process of elimination, Ms Robertson, is that right, on behalf of MSS, had some matters --- there's Ms Robertson now, who can speak for herself, perhaps.

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MS ROBERTSON: Madam Chair, yes, originally I had some matters that we wished

to raise. One of them was in relation to a paragraph of Mr Xerri's witness statement which we considered was not accurate. There is, however, a document included in the tender bundle for Ms Currie which, in our submission, will be capable of having that matter dealt with by way of submissions.

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In relation to the non-tender of PX-1, it seems to me that is a matter that I wasn't aware of until today. Those were certificates provided by my client and obviously my client would not want anything to be said, that they hadn't been provided or that they didn't in fact provide the relevant compliance training in those certificates.

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CHAIR: No. And for your comfort, Ms Robertson, it is absolutely clear that your client did what was asked of it and produced those certificates, but as Mr Neal has indicated, there is no issue taken with the fact that your client did respond to the notice, provide the certificates and they are responsive to the notice and address the issue. But providing, as I understand it, there is a huge number of them --

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MS ROBERTSON: Yes.

CHAIR: --- and they are de-identified repeat documents over and over again, simply confirming that each employee of your client, employee or however else one might be described, engaged by your client completed the necessary compliance requirements. So obviously --

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MS ROBERTSON: Quite so.

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CHAIR: --- the issue won't be raised to the contrary, is what I'm assuring you.

MS ROBERTSON: Thank you, Madam Chair.

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CHAIR: Thanks, Ms Robertson.

I understand that the legal representative of Wilson also wished, as you have indicated to me, wanted to raise some matters before the Board with respect to the tender of that document. I can see Mr Oldfield on screen now on behalf of Wilson.

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MR OLDFIELD: Yes, good evening, Madam Chair.

Mr Neal misstated Wilson's position. It is not an objection as such insofar as it's in fact a proposal to deal with an issue that was not addressed by Counsel Assisting in correspondence on the weekend, with respect to an appropriate way the Board may deal with the tender. We are not objecting to the tender but we are proposing a solution to the tender, observing that there are inaccuracies on the face of document that my client has identified over the course of the weekend that we had the document.

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45

CHAIR: Yes. And Mr Oldfield, just to foreshorten the need to address the matter any further, I have been provided with a document from you or your leader that goes

to several matters where you take issue with the accuracy of Mr Xerri's statement and, understandably, your client wants to put on the public record, sufficiently proximate to the tender of the document, those matters that you take issue with and I'm satisfied that that is an appropriate course to allow the Board, as Mr Neal said, to be judicious with the time available to the Board and enable me, importantly, to have appropriate time and opportunity to hear from those witnesses, obviously, who, as Mr Neal has described, are the important decision makers. So that was part of, I think, what formed the view about having Mr Xerri's document come before the Board by way of tender.

That is not to eradicate or foreshorten or cause concern to your client or indeed Mr Moses' client as well. So if you want to now turn to the matters that you wish to put on the record via that submission, if you are minded to do that now, I am happy for that to happen now.

MR OLDFIELD: Yes. The matter that my client has identified as being inaccurate on the statement, or otherwise inconsistent with other evidence, those matters are contained at paragraphs 36, 37, 42, 72 and 82 of the statement, and in broad terms they fall into two categories: one category relates to Mr Xerri's knowledge about the use of subcontractors and the DJPR's approval of that use; and the second category relates to the reporting in the statement of incidents that are recorded in an incident log.

Now, insofar as those matters are concerned or insofar as those matters as expressed in the statement are inaccurate, there is obviously a risk with the accepting of the tender that the Board is accepting evidence that may be inaccurate. And there are two ramifications to such acceptance of the tender: the first is in respect of the efficacy of the Board's decision-making process and the second is in relation to the fact that there may be evidence put before the Board and put on the record that may unfairly prejudice my client's position and reputation.

The proposal that we have suggested by way of submission is that --- obviously, the matters that we have identified may not, at the end of the day, be matters that the Board considers it necessary to determine in order to fulfil its function. But that doesn't necessarily mean that the effect of such information being on the record will not affect that secondary point, which is in relation to the potential prejudice such information may cause to my client.

With that in mind, the proposal that we have put forward to deal with this matter would be to seek an order that those matters that we have identified be removed or otherwise redacted in the version of the statement that is made available for the public record, until such time that the Board determines that those matters need to be resolved, and if they do need to be resolved then steps can be put in place in order that the usual processes that preserve procedural fairness are put in place.

So that is the tenor of the submission that Wilson Security has put forward with respect to Mr Xerri's statement.

CHAIR: Mr Oldfield, as I understand it, the general manager of your client is coming before the Board later on in the week; is that right?

5 MR OLDFIELD: He has provided a statement, so, yes, that may be so.

CHAIR: And would be able to address these matters that your client takes issue with?

10 MR OLDFIELD: Not necessarily. Not necessarily so, because some of them were not in fact --- Wilson was not in fact made aware of some of the issues that are in the statement.

15 CHAIR: Sorry, at the time at which your client made the statement that he has prepared for the Board, but I'm talking about him giving evidence.

MR OLDFIELD: Yes. Well, even as we sit here today, we did not know about the existence of the matters stated in Mr Xerri's statement until we received that statement, and we still don't know about the truth of the content because it is not
20 Mr Xerri's knowledge that is being disclosed in the statement, it is somebody else's, so we are unable to test the truth or otherwise of some aspects of what's being said in Mr Xerri's statement, and Wilson has no knowledge of it itself. It seems to be held with others and Mr Xerri is commenting about it but wouldn't be able to --- it's a classic hearsay statement which is what it is.

25 CHAIR: I see.

Mr Neal?

30 MR NEAL QC: Madam Chair, might I just say this by way of general comment that is responsive but perhaps for the general audience: the position that those assisting you take is that when evidence is being tendered, it is the responsibility for those assisting you to tender everything --- everything of relevance, obviously. But this is not a civil proceeding, we don't prosecute a case via the statements and evidence that
35 are otherwise tendered before you. It doesn't follow at all that if a witness statement is tendered that we are suggesting to the Board that there should be an uncritical assessment of it, that we support it or anything of the like. It is simply a witness statement.

40 For those who are concerned by it, obviously they need to be given an opportunity to direct their own evidence from it, which is the matter that, with respect, the Board just raised, and/or to make submissions about it, particularly submissions which might be given in light of the fact that contrary propositions arose from sworn evidence of, in this case, for example, the manager of the security company.

45 So we just want to make it plain on the record that the tendering of a witness statement and documents is not supportive of the fact that it is necessarily correct or

otherwise, it is simply the tendering of a document which appears on its face to be relevant. We think that's a matter that needs to be taken into account when these issues are being weighed.

5 MR OLDFIELD: If I could respond to that, Madam Chair, to be clear, we are not objecting to the tender.

CHAIR: Yes.

10 MR OLDFIELD: What we are identifying are issues of inaccuracy that would ordinarily be dealt with by way of cross-examination of a witness.

CHAIR: Yes.

15 MR OLDFIELD: Now, we accept the Board has decided to tender the statement and the exhibit attached thereto. The Board has the power under section 73 of the *Inquiries Act* in relation to the publication of such evidence that it receives in the tender and the use that can be made of that information, it's to that power that we are drawing the Board's attention. We are not suggesting that the tender shouldn't occur,
20 but where there is a tender of evidence which on its face is inaccurate, caution ought to apply because questions of natural justice do come to the fore.

The matters that have been identified can really only be dealt with by way of cross-examination, in my submission, it is not a situation where it's for another
25 witness from Wilson to come and refute it, because that person is not in a position to do that. As I said, it may well be that the Board, being apprised of the information, may not see it necessary to deal with the controversy and therefore the matter may not ultimately go anywhere. But if it does, at that point in time, obviously, there would need to be resolution of the issue.

30 CHAIR: Sorry --

MR OLDFIELD: That resolution could be cross-examination, recalling the witness for cross-examination, if that were necessary in the Board's consideration.

35 CHAIR: Yes. Do you mean --- sorry, you just lost me with respect to dealing with the controversy. Are you saying after your client has given evidence?

MR OLDFIELD: No, I --

40 CHAIR: Or are you saying --

MR OLDFIELD: No, Madam Chair, what I'm trying to say is that there is a controversy that we have identified in some of the statements of Mr Xerri, and to be
45 clear, what we say is those statements are inaccurate.

CHAIR: Yes, understood.

MR OLDFIELD: Now, the Board may not need to resolve that issue because the Board might not consider it necessary to resolve the accuracy or otherwise of those statements.

5

CHAIR: I see. I follow. Yes, I follow. All right.

MR MOSES SC: Madam Chair --

10 CHAIR: I haven't finished this issue, Mr Moses. I can see you and appreciate that you also wish to be heard on this issue. So be reassured that you will be.

MR MOSES SC: Thank you, Madam Chair.

15 CHAIR: What I understand is that those paragraphs, 36, 37, 42 and 82, your solution to the issue is not to object to the tender, Mr Oldfield, but rather to not have those particular paragraphs made public as part of the tendering of the statement until --- up until when and if the Board considers that they have relevance to its deliberations, you be put on notice of that again, to be heard as to whether or not those aspects of
20 the evidence are published. Does that resolve the issue for you?

MR OLDFIELD: Yes, it does, Madam Chair. Just for completeness, I added paragraph 72.

25 CHAIR: Just bear with me for a moment.

MR OLDFIELD: I should say, they have been set out in the short submission.

CHAIR: Yes, all right.

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MR NEAL QC: Madam Chair, can I just seek a clarification. The submission from Mr Oldfield has paragraphs 36, 37, 42, 79 and 82 and he seeks to add paragraph 72?

MR OLDFIELD: No.

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MR NEAL QC: Is it only the paragraphs referenced in the submission, Mr Oldfield?

MR OLDFIELD: It is. It is only the paragraphs referenced in the submission, Mr Neal.

40

MR NEAL QC: Then the paragraphs are 36, 37, 42, 79 and 82?

MR OLDFIELD: Yes, that's correct.

45 MR NEAL QC: I am obviously in the Board's hand there. But if that is a course which recommends itself then presumably the non-publication of those paragraphs and the documents that are referred to in those paragraphs would follow.

CHAIR: Yes. Yes, and I can see that there is reference made to a witness that is actually also going to be giving evidence later in the week, which might clarify for Mr Oldfield's purposes --- might both clarify and be a resolution of the issues that
5 Mr Oldfield raises. So in that sense --- look, it seems to me to be a not unreasonable course to deal with those issues.

MR NEAL QC: Thank you.

10 CHAIR: Yes. So I'll make that direction with respect to your client, Mr Oldfield. Obviously it will be a matter for Counsel Assisting with respect to those witnesses coming later in the week, as to whether or not those issues continue to get ventilated before the Board.

15 MR OLDFIELD: Thank you, Madam Chair.

CHAIR: Now, Mr Moses.

MR MOSES SC: Thank you, Madam Chair. Our primary position is that the
20 decision whether to call Mr Xerri to be cross-examined should be postponed until after the Secretary of the Department gives evidence, if he wasn't being called first. One of the key planks of his evidence relates to his assertion that in respect of Unified, if I can deal with Unified directly, that he was not aware of the use of other subcontractors during the period that they were engaged. Now, we don't know ---
25 and we wish to challenge that --- but we don't know what information, if any, he gave to the Secretary of the Department. Now, what we don't want to be met with is a situation where the Secretary gives evidence and he asserts that Mr Xerri did not brief him on key issues. Because whilst the Secretary of the Department, together with the Minister, it's not just the Secretary ---

30 CHAIR: Are you referring to a particular paragraph in the statement?

MR MOSES SC: I am referring to paragraph 45 and also paragraph 11 is relevant as well, which I will come back to. But what we say is that we don't want to be met
35 with the position where the Secretary of the Department gives evidence about this issue, because there seems to be a theme from the Department of Jobs that they were not aware of the use of subcontractors by security entities, and we wish to take issue with that. That's the first issue. If you go to paragraph 11, you will see that there's an assertion made, which I won't read out, and there's an annexure to paragraph 11 of an email chain which is DJP.110.001.5268, which makes an assertion concerning
40 Unified Security that is not true and which we wish to challenge in respect of what happened after that email.

45 So we are in a position where we well understand what my learned friend Senior Counsel Assisting has said, but it is unusual where you have a statement going on and being put into evidence, where there is a challenge to it and we are being told, "Well, this may or may not form part of the Board's consideration in the end", but we

don't know, standing here today, how it may be deployed. For instance, the Department of Jobs may say, "We did not know that security companies were using subcontracted labour. Had we known that then we may have taken a different course." We don't know what their submission is going to be. But if we are not in a position to challenge this, it leaves this evidence in a vacuum for us.

Having said that, our fallback position is that if the statement is to be put in at this stage without cross-examination, we would seek paragraph 45 --- and, to put it into context, because paragraph 46 follows on from it, that paragraphs 45 and 46 be the subject of redaction, and paragraph 11 and the related documents, and for that issue to be potentially revisited after the Secretary of the Department gives his evidence in respect of this matter.

But at this point it is, in our respectful submission, not appropriate for a statement to go on that makes assertions that are subject to challenge and we are not being given a position to cross-examine the witness in respect of those assertions because we apprehend, we apprehend, and we are apprehending a submission that the Department of Jobs may make concerning the use of contractors, so we want to meet that head on.

That's all I wish to say, Madam Chair, thank you.

CHAIR: All right. Thanks, Mr Moses.

Mr Neal, I'm not sure if there's anything more that you want to say about that. But I certainly don't want to labour over this issue any further. Given the concession that has been made to Wilson, it would seem to me inappropriate to not make the same concession to Unified as pressed by Mr Moses. It may be that, as Mr Moses says, and his client too will be given the opportunity to ventilate the position later on in the week, and there's also a further witness that is referred to throughout --- not just Mr Phemister but a further witness, Ms May, who is referred to in various parts of Mr Xerri's statement, and perhaps the anxiety that is being ventilated at the moment with respect to those various parts of the statement can be dealt with as Mr Moses suggests after that further evidence has been called.

MR NEAL QC: With respect, I see the sense of that course, Madam Chair.

CHAIR: Yes. I will make those directions with respect to the controversial parts of those statements, as identified by Mr Oldfield and Mr Moses. Otherwise, that seems to be the end of business before the Board today.

Is that right, Mr Neal?

MR NEAL QC: That's correct, Madam Chair, for today. May I say in respect of tomorrow, the witnesses which had been proposed to be called, through no fault of anybody in particular, only latterly have gone up on to the hearing book. In those circumstances, we can see that the time between them going up and the time for

parties to be putting propositions to them is too foreshortened and we acknowledge that, it is a difficulty for other parties, it is difficult for Counsel Assisting you as well, because of the logistical difficulties that we all experience in having such a hearing remotely.

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The course that we are suggesting then is that the Board not sit tomorrow, in light of that, but sit Friday as the replacement day, in all probability, and that the Board will sit again on Wednesday and that there will be confirmation hopefully before the end of today as to the witnesses who will be called there and most of whom, as

10 I understand it at the moment, it is subject to confirmation, will have been up on the hearing book in a sufficient time to allow that to be done. So I'm sorry, I can't be more specific than that for the moment.

CHAIR: All right. Just to be clear about that, the way in which --- we were going to
15 proceed tomorrow with the witnesses who were scheduled to give evidence tomorrow, indeed what's happening is those witnesses are now being adjourned through to a sitting on Friday, rather than tomorrow, so we are simply shuffling around the sitting days, Friday having originally been a non-sitting day will now be a sitting day, and to allow all of the parties with leave to appear appropriate time, as
20 well as Counsel Assisting appropriate time to get across the material that has been, as you say, latterly made available, will allow that process to happen.

MR NEAL QC: That's correct, Madam Chair.

25 CHAIR: All right. So 10 o'clock on Wednesday, then, Mr Neal.

MR NEAL QC: Yes, Madam Chair.

CHAIR: All right. Thank you. I'll adjourn now until 10.00 on Wednesday.
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**HEARING ADJOURNED AT 3.56 PM UNTIL 10.00 AM ON WEDNESDAY,
2 SEPTEMBER 2020**

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